

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

September 18, 2024 at 9:00 a.m.

1. [24-20649-E-13](#) SHANE SIEGEL MOTION TO DISMISS CASE
[DPC-2](#) Michael Hays 7-26-24 [47]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 26, 2024. By the court’s calculation, 54 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is granted and the Bankruptcy Case is dismissed.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Shane Christian Siegel’s (“Debtor”) Chapter 13 case based on Debtor failing to timely propose a Plan and set it for confirmation. Mot. 1:23-26, Docket 47.

Debtor filed a Response on September 4, 2024, stating he would file a Notice of Conversion to a case under Chapter 7 prior to the hearing date on this Motion. Docket 51. A review of the Docket on September 13, 2024, reveals no such Notice has yet been filed.

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 28, 2024. Docket 41. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In confirming if the case has been converted, at the hearing, **XXXXXXX**

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

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

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

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

Item 2 thru 3

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 August 20, 2024. The court computes that 29 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$78 due on August 12, 2024.

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

The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on July 8, 2024. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXX.

SEPTEMBER 28, 2024 HEARING

At the prior hearing held on August 14, 2024, counsel for Debtor presented the court with facts detailing extraordinary events surrounding this Debtor that gave rise to the delinquency. The court continued the hearing in light of these arguments.

At the hearing, XXXXXXX

REVIEW OF THE MOTION

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

1. The debtor, Jose Antonio Garcia (“Debtor”), is delinquent \$4,050.00 in plan payments. Debtor never commenced making plan payments. Mot. 1:25-26, Docket 46.

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

DEBTOR’S RESPONSE

Debtor filed a Response on July 31, 2024. Docket 58. Debtor states, without filing any evidence in support, that he has been victim of a “horrible crime” that has delayed prosecution of the case.

This “Opposition” filed by Debtor’s counsel is little more than Debtor’s counsel directing the court to enter an order in favor of Debtor.

DISCUSSION

Delinquent

Debtor is \$4,050.00 delinquent in plan payments, which represents one month of the 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).

Here, Debtor argues a horrible crime has occurred. Debtor does not offer any evidence in support of this argument, nor does Debtor provide even a generalized description of what crime has occurred in this case that has caused the delinquency.

This is not Debtor’s only recently filed bankruptcy case. On October 2, 2023, Debtor with the assistance of his current counsel commenced Chapter 13 Case 23-23473 (Debtor’s “First CH 13 Case”). Debtor’s First CH 13 Case was dismissed on May 2, 2024. 23-23473; Dismissal Order, Dckt. 68. The Current Chapter 13 Case was filed by Debtor and his counsel on May 13, 2024 (eleven days after dismissal of Debtor’s First CH 13 Case).

The Debtor’s First CH 13 Case was dismissed due to monetary defaults, failure to provide tax returns, and failure of Debtor to file tax returns in 2019, 2020, 2021, and 2022. *Id.*; Civ. Minutes, Dckt. 67 at 2.

At the hearing, Debtor’s counsel provided some additional information concerning the “crime events” and their extraordinary nature. Debtor’s counsel explained why communication difficulties had arisen and steps he would take to address that.

Though the Chapter 13 Trustee requested a conditional dismissal order requiring the Debtor to be current on all Plan payments by September 3, 2024, the court determines that continuance of the hearing to 9:00 a.m. on September 18, 2024, is proper under these facts and circumstances represented to the court by Debtor’s counsel.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on July 26, 2024. By the court's calculation, 54 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is ~~denied without prejudice.~~

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

1. The debtor, Farron Lee Drylie and Valerie Renee Drylie ("Debtor"), failed to file a Motion to Confirm Amended Plan after filing the Amended Plan on June 10, 2024. Mot. 1:24-26, Docket 17.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 19.

DEBTOR'S RESPONSE

Debtor's attorney filed a Declaration in response on September 4, 2024. Docket 25. Debtor's attorney filed that same Declaration two more times at Dockets 25 and 31. Debtor's attorney states:

1. She has just filed a Motion to Confirm the Amended Plan. She apologizes for her being tardy in filing the Motion to Confirm. Decl. ¶¶ 3, 5.
2. Debtor's attorney has concluded that general unsecured claims actually came in lower than anticipated, so even though she filed a Motion to Confirm the First Amended Plan, a second Amended Plan is necessary. *Id.* at ¶ 4.

DISCUSSION

Debtor failed to file a Motion to Confirm the First Amended Plan that was filed on June 10, 2024. That is unreasonable delay that is prejudicial to creditors.

However, Debtor's attorney informs the court it was due to her oversight that the Motion was not timely filed, asking for a continuance. Debtor did file a Motion to Confirm the First Amended Plan, but Debtor also informs the court a Second Amended Plan is necessary in this case. Though the Plan provides for a 100% dividend for creditors holding general unsecured claims, it is stated that a second amended plan, which decreases the amount of the monthly plan payment, will be filed.

At the hearing, **XXXXXXX**

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Bryan Walton Flores (“Debtor”), is delinquent \$521.00 in plan payments, never commencing to make payments. Mot. 2:1-5, Docket 22.
2. Debtor failed to submit proof of his social security number and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on July 11, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). Mot. 2:7-13, Docket 22.
3. Debtor has failed to provide 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Mot. 2:14-19, Docket 22.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 24.

DISCUSSION
Delinquent

Debtor is \$521 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**Failure to Authenticate Identification
Prior to Meeting of Creditors**

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity;
and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

Failure to File Documents Related to Business

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

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

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.

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

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

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

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

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

6. [22-21314-E-13](#) **NADIA ZHIRY** **MOTION TO DISMISS CASE**
[DPC-6](#) **Peter Macaluso** **8-19-24 [412]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on August 19, 2024. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Nadia Zhiry (“Debtor”), has failed to diligently prosecute a plan in this case, despite the case being 30 months old. Mot. 1:24-2:8, Docket 412.

Trustee submitted the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 414.

The state court receiver appointed in the underlying state case, Gerard F. Keena II, submitted a Support Document on September 3, 2024, urging the court to dismiss. Docket 416.

DISCUSSION

No Pending Plan / Delay of Confirmation

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 July 21, 2024. Docket 411. As of the court's September 10, 2024 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. This case was filed on May 25, 2022 without a confirmed plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Plan and Documents Filed

On September 11, 2024, the Debtor filed a Motion to Confirm, a Third Amended Plan, and Supplemental Schedules. The basic terms of the proposed Third Amended Plan are:

A. The Plan Payments are:

1. \$34,500.00 total payments through August 2024.
2. \$7,100.00 for the remaining 33 months of the Plan.
3. Plan payments total \$268,800.

Third Amd. Plan, § 7 Additional Provisions; Dckt. 426.

B. Class 2(A) Secured Claims

1. Receiver.....(\$183,585.18). *Id.*; ¶ 3.09.
2. Debtor disputes that Receiver's Claim is in excess of (\$183,585), Debtor having received a discharge in her prior Chapter 7 case of amounts in excess thereon.

C. Class 4 Secured Claims

1. Direct payments to JP Morgan Chase Bank, payments to be made by Debtor's Daughter.

Id.; ¶ 3.10

D. Class 7 General Unsecured Claims

1. 100% Dividend.....(\$58,500.00)

Id.; ¶ 3.14.

There are no other claims to be paid through the Third Amended Plan.

No Secured Claim Now Asserted by Receiver

On June 24, 2024, the Receiver filed Amended Proof of Claim 1-4 in which an unsecured claim for (\$336,336.73) has been filed. No encumbrance on any property of the Debtor or Bankruptcy Estate

Thus, it appear that the Third Amended Plan should not provide for the Receiver as having a Class 2(A) secured claim.

The Receiver computes his claim in the amount of (\$336,336.73) to be comprised of the following amounts:

1. Receiver Fees for 8/1/2021 - 3/31/2024.....(\$171,937.50)
2. Receiver Out of Pocket Costs 8/1/2021 - 3/31/2024.....(\$ 9,061.95)
3. Rimmer; Ervin, Cohen & Jessup; and Pino Legal Fees
8/1/2021 - 3/31/2024.....(\$143,458.66)
4. Receiver Directed Property Expenditures.....(\$ 11,878.62)

Presumably, the Judge of the Superior Court of the State of California has allowed the Receiver's Fees, the Receiver's Out of Pocket Costs, and the Receiver's Directed Property Expenditures relating to the Receiver, and professionals of the Receiver, fulfilling his fiduciary obligations as a receiver appointed by the Superior Court.

Thus, it is unclear what are the (\$143,458.66) in legal fees being included in the Third Amended Proof of Claim 1-4. It may be that these are being asserted as contractual or statutory attorney's fees relating to proceedings in this Federal Court that the State Court Judge concluded would need to be determined by the court in which such proceedings took place.

At the hearing, **XXXXXXX**

Prosecution of Case by Debtor

At the September 18, 2024, hearing, **XXXXXXX**

Based on the foregoing, **XXXXXXX**.

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

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

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

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

7. <u>19-27920-E-13</u> <u>DPC-3</u>	MICHAEL MULLINS Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 6-14-24 [94]
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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, parties requesting special notice, and Office of the United States Trustee on June 14, 2024. By the court’s calculation, 61 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 XXXXXXX.</p>
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SEPTEMBER 18, 2024 HEARING

The court continued the hearing given the age of this case and the amount Debtor has paid to date. Nothing new has been filed in the case as of the court’s review on September 11, 2024.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

1. The debtor, Michael Roy Mullins (“Debtor”), is delinquent \$5,267.93 in plan payments. Debtor will need to have paid \$11,374.57 to become current by the hearing date. Mot. 1:19-22, Docket 94.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 96.

DEBTOR’S RESPONSE

Debtor filed a Response and accompanying Declaration on July 31, 2024. Dockets 98, 99. Debtor states the delinquency will be cured prior to the hearing date and reminds the court he has already paid over \$143,775.15 toward his Plan.

DISCUSSION

Delinquent

Debtor is \$5,267.93 delinquent in plan payments, which represents multiple months of the \$3,053.32 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).

In this case, Debtor has testified they will become current by the hearing date. At the hearing, counsel for the Trustee reported that Debtor is delinquent four plan payments.

The Trustee requested a continuance, rather than a conditional dismissal, given the facts and circumstances of Debtor’s performance and the terms of the Plan.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Douglas Arthur Dixon (“Debtor”), failed to appear at the 341 Meeting held on July 11, 2024. Mot. 1:24-26, Docket 22.
2. Debtor failed to submit proof of his social security number and a copy of a government issued picture identification to the Trustee at the Meeting of Creditors, held on July 11, 2024, as required pursuant to FRBP 4002(b)(1)(B). Mot. 2:1-7, Docket 22.
3. Debtor failed to provide 11 U.S.C. § 521 documents, including 60 days of employer payment advices, a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. Mot. 2:10-20, Docket 22.
4. Debtor used the wrong plan form. Local Rule 3015-1(a) states that the mandatory form Plan EDC 003-080 shall be utilized as the standard form. Mot. 2:21-27, Docket 22.
5. Trustee cannot assess Feasibility of the plan because Form 122C-2 was not filed. As stated on Form 122C-1, the Debtor is over the median income so Form 122C-2 would be required to be filed. Mot. 3:1-4, Docket 22.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 24.

DISCUSSION

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity;
and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

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

Failure to Appear at 341 Meeting

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. *See* 11 U.S.C. § 343. Attempting to confirm a plan while failing to appear and be questioned by Trustee and any creditors who appear represents a failure to cooperate. *See* 11 U.S.C. § 521(a)(3). Debtor did not appear at the continued meeting held on August 22, 2024. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

Wrong Plan Form Used

Debtor's Plan is based upon a plan form that this District does not use. Debtor must use plan form EDC 003-080. Local Bankruptcy Rule 3015-1(a). Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to File Form 122C-2

Form 122C-2 is required to be filed when a debtor is above median income, as is the case here. Failure to file the form results in 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.

Review of Court's Files

A review of the court's files discloses that this is the Debtor's third-filed recent Chapter 13 Case. On November 17, 2023, the Debtor commenced case 23-24135 in *pro se*, which case was dismissed on December 5, 2023. Case 23-24135 was dismissed for Debtor's failure to file Documents, including Schedules, Statement of Financial Affairs, and a Chapter 13 Plan.

Debtor's second recent Chapter 13 Case 24-20778 was filed on February 28, 2024, in *pro se* and dismissed on March 18, 2024. Case 24-20778 was dismissed for Debtor's failure to file Documents, including Schedules, Statement of Financial Affairs, and a Chapter 13 Plan.

In the current Chapter 13 Case the Debtor filed his Schedules, Statement of Financial Affairs, and a Plan. While filing such documents, they were not complete and Debtor failed to provide tax returns, Social Security information, and pay records, as well as failing to attend the First Meeting of Creditors. This led to the court sustaining objections to confirmation. Civ. Minutes; Dckt. 28. Additionally, the Debtor did not use the required Eastern District of California Chapter 13 Plan, and the Plan provided for making \$0.00 in plan payments to the Trustee. Plan; Dckt. 10.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Parties requesting special notice, and Office of the United States Trustee on June 5, 2024. 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). 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 ~~XXXXXXX~~.

SEPTEMBER 18, 2024 HEARING

At the prior hearing, counsel for the Debtor reported that a Plan has been filed and a Motion to Confirm will be filed shortly and set for hearing. The Trustee concurred with the request for a continuance of the hearing on this Motion.

A review of the Docket on September 11, 2024, reveals no Motion to Confirm has yet been filed, almost a month after Debtor reported the Motion would be filed.

A Plan was filed on August 14, 2024. Dckt. 61. The Plan provides for \$1,718.00 a month in Plan payments for a period of 60 months. Plan, ¶¶ 2.01, 20.2; Dckt. 61.

There are Class 2 secure claims provided in the Plan. *Id.* ¶ 3.08. For the Class 2(A) Secured Claims the monthly disbursements total \$430.25, and for the Class 2(B) Secured Claims the monthly disbursements total \$736.18.

The Class 2 Secured Claims disbursements total \$1,166.43.

The other creditors provided for are: (1) priority unsecured claim of (\$959.04) and general unsecured claims of (\$102,319.00) who are to receive not less than a 26.20% dividend.

At the hearing, **XXXXXXX**

REVIEW OF THE MOTION

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

1. No Motion to Confirm Plan is pending following Objection to Confirmation, which was sustained December 12, 2023. Mot. 1:24-2:7, Docket 47.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 49.

DISCUSSION

No Pending Plan

Debtor did not Move to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on December 12, 2023. A review of the docket shows that Debtor has not yet moved to confirm the Amended Plan that was filed on March 19, 2024. 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).

Counsel for Debtor reported that the Debtor had surgery, and has now recovered and is back at work, employed as a nurse. She is now able to take on some overtime shifts to provide additional cash flow to fund a modified Plan.

August 14, 2024 Hearing

The Trustee concurred with a request for a continuance to allow the Debtor to document her income status and file a modified Plan. A review of the Docket on August 9, 2024, reveals that no modified plan has been filed with the court.

The hearing on the dismissal Motion was continued based on the representation that the Debtor could now proceed with the diligent prosecution of this Bankruptcy Case.

The Debtor has not filed a Plan, motion to confirm, and supporting evidence, and no motion to confirm has been set for hearing.

No opposition has been filed to this Motion.

It appears that prosecution of this case, with the remaining months for a Plan, is not something that this Debtor can prosecute. It appears that Debtor needs a “clean slate,” with a full 60 months for a new Plan, in a new bankruptcy case to be filed after the dismissal of this Case.

However, at the hearing, counsel for the Debtor reported that the Plan has been filed and a Motion to Confirm will be filed shortly and set for hearing. The Trustee concurred with the request for a continuance of the hearing on this Motion.

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

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

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

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

10. [24-20742-E-13](#) **PHILLISTINE VOSLEY** **MOTION TO DISMISS CASE**
[DPC-3](#) **Pro Se** **8-6-24 [39]**

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

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, parties requesting special notice, and Office of the United States Trustee on August 6, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXX.

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

1. The debtor, Phillistine Elizabeth Vosley (“Debtor”), is delinquent \$2,158.12 in plan payments. Mot. 1:24, Docket 39.

2. Trustee objected to confirmation of the Debtor's original Plan, which was sustained at hearing on May 7, 2024, (Docket 28). The Debtor has failed to file an amended Plan and set a hearing for confirmation. Mot. 2:3-6, Docket 39.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 41.

DEBTOR'S RESPONSE

Debtor filed a Response on September 6, 2024. Docket 43. Debtor opposes dismissal, stating she is actually current on plan payments. She also states she has set a plan to cure the arrearage on her mortgage payments.

However, no Amended Plan is on the docket as of September 11, 2024.

While the Debtor is actively engaged in this Case, she appears to be struggling with the procedures and law. The Response filed to the Motion to Dismiss is actually the Motion to Dismiss form from the Central District of California. Though titled as a Motion to Dismiss and the first sentence states, "Debtor moves this court for an order dismissing the above-entitled bankruptcy case pursuant to 11 U.S.C. § 1307(b) and LBR 3015-1(q)(1)."

However, in paragraph 4 of the "Motion to Dismiss" Debtor clearly states that she opposes dismissal.

DISCUSSION

Delinquency

Debtor is \$2,158.12 delinquent in plan payments, which represents roughly one month of the payment. Before the hearing, another plan payment will be due. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

However, Debtor contends she is current on plan payments. At the hearing, **XXXXXXX**

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 9, 2024. Docket 28. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor states she has contacted her mortgage company and set a plan to pay the arrearage. At the hearing, **XXXXXXX**

Failure to file a Plan is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

11. [24-22258-E-13](#) **TYLER-JAMES MCCALL** **MOTION TO DISMISS CASE**
[DPC-2](#) **Pro Se** **7-17-24 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Tyler-James Wilson McCall (“Debtor”), never commenced making plan payments and is delinquent \$1,600.00 in plan payments. Mot. 1:25-2:3, Docket 47.
2. Debtor failed to appear at the duly noticed First Meeting of Creditors on July 11, 2024, as required pursuant to 11 U.S.C. § 343. Mot. 2:4-7, Docket 47.

3. Debtor failed to provide 11 U.S.C. § 521 documents, including 60 days of employer payment advices, a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. Mot. 2:8-19, Docket 47.
4. Debtor, failed to submit proof of his social security number to the Trustee at the Meeting of Creditors, held on July 11, 2024, as required pursuant to FRBP 4002(b)(1)(B).
5. Debtor is unable to make the payments called for under the Plan, his Schedules I and J showing a negative monthly income of (\$2,458.00).

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 49.

DISCUSSION

Delinquent

Debtor is \$1,600.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Failure to Provide Tax Returns

Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Failure to Provide Pay Advices

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

Failure to Authenticate Identification Prior to Meeting of Creditors

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity; and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

Failure to Afford Plan Payment

Debtor cannot make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). His Schedules I and J show a negative monthly income of (\$2,458.00). Schedule I and J at 27, Docket 17.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on August 21, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXX.

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

1. The debtor, Lonna Sue Sanders (“Debtor”), has not filed tax returns for 2022 and 2023. According to the claim filed by the Franchise Tax Board, Debtor has failed to file her tax returns for the 2019, 2021, 2022 and 2023 tax years . Mot. 1:24-2:4, Docket 35.
2. Confirmation of Debtor’s plan was denied on August 11, 2024, (Docket 33), and no plan is currently pending. *Id.* at 2:5-7.

Trustee submitted the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 37.

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on September 4, 2024. Docket 37. Debtor states that she has filed and given her attorney the necessary tax returns, and she will have an amended plan on file soon.

DISCUSSION

Failure to File Tax Returns

Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2022 and 2023 tax years have not been filed. 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). Here, Debtor states she has filed the necessary returns.

At the hearing, **XXXXXXX**

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 August 11, 2024. Docket 33. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor states she expects to file an amended plan by the hearing on this Motion.

At the hearing, **XXXXXXX**.

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

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

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

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

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

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, parties requesting special notice, and Office of the United States Trustee on August 6, 2024. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is granted and the Bankruptcy Case is dismissed.

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

1. The debtor, Darral Lynn Barrow (“Debtor”), has failed to file an amended Plan and set a hearing for confirmation after the court sustained Trustee’s previous Objection to Confirmation of the prior Plan on June 4, 2024 at Docket 25. Mot. 1:24-26, Docket 29.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 31.

DEBTOR’S RESPONSE

Debtor filed a Response on August 19, 2024. Docket 33. Debtor requests leave to file an Amended Plan that would resolve Trustee’s issues.

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 June 4, 2024. Docket 24. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor states a new Amended Plan is in the works, and Debtor is trying to comply with Trustee’s requests.

This Bankruptcy Case was filed on April 4, 2024. As shown in the Debtor’s Opposition to the Motion to Dismiss, the Debtor included on Schedule I withholding of a \$1,000 a month support obligation, and then listed a \$1,000 a month domestic support obligation on Schedule J, thereby “Double Reducing” the Debtor’s projected disposable income as computed on Schedule J. Schedules I, ¶ 5f, and J, ¶ 19; Dckt. 1.

The Trustee identified this “Double Reducing” problem and failure of the Debtor to provide the Domestic Support payment information in the Trustee’s Objection to Confirmation. Obj to Conf. Civ. Minutes; Dckt. 23. The court sustained the Objection to Confirmation on June 12, 2024. Order; Dckt. 25.

The hearing on the Trustee’s Motion to Dismiss is being conducted on September 16, 2024 - three months after the Order sustaining the Objection to Confirmation was entered.

Reviewing the Docket, the record is devoid of any activity by the Debtor to prosecute this case in the last three months. The only pleading filed is the Opposition to the Motion to Dismiss, which requests “leave” to file an amended plan. Opp.; Dckt. 33.

It appears that there are other impediments to the Debtor prosecuting this Chapter 13 case.

For the Debtor, this is not his only recent Chapter 13 filing that he has failed to prosecute. On January 26, 2023, the Debtor, represented by counsel, filed a Chapter 13 Case, 23-20229. That case was dismissed on July 21, 2023. The Civil Minutes for the hearing on the Trustee’s Motion to Dismiss states that the dismissal resulted from: (1) Debtor failing to file an amended Plan after the court denied confirmation of a prior plan, and (2) failure to provide pay advices. 23-20229; Civ. Minutes, Dckt. 32.

Debtor and his counsel successfully prosecuted two Chapter 7 Cases for the Debtor: Chapter 7 Case 13-24858, discharge entered March 3, 2014; and Chapter 7 Case 2022, 22-20071, discharge entered April 24, 2022.

Thus, over the last decade and one-half, counsel has represented Debtor in six prior bankruptcy cases, with four Chapter 13 cases being dismissed ^{FN1.} and two Chapter 7 cases successfully prosecuted so that Debtor obtained discharges in each.

FN. 1. Chapter 13 Case 10-29767, dismissed September 30, 2010; Chapter 13 Case 11-20318, dismissed June 16, 2011; Chapter 13 Case 12-29245, dismissed July 26, 2012; Chapter 13 Case dismissed July 21, 2023.

Review of Claims Filed

Debtor having just received a Chapter 7 discharge in 2022, he is fortunately to not be overburdened with a multitude of creditors having claims. However, a review of the claims filed show that there are two major creditors, the Internal Revenue Service and the California Franchise Tax Board. Debtor’s Schedules list these two tax claims, though at a lower amount for the Internal Revenue Service claim. Based on the amounts stated in the Proofs of Claim for secured and priority tax claims, the monthly

principal payment (not including interest on the smaller secured portion) would be \$4,384 over a sixty month Plan.

For other secured claims, Debtor lists four other claims secured by vehicles.

At the hearing, **XXXXXXX**.

~~Cause has been shown by the Trustee for dismissal of this Bankruptcy Case. The Debtor has been unable to prosecute the case, unable to file an amended Plan, unable to correct his Schedules, and unable to provide the Trustee with the required information over the past ninety (90) days.~~

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

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

1. The debtor, Kiana Calica Zamora (“Debtor”), is delinquent \$872.20 in plan payments. Mot. 1:23-25, Docket 29.
2. Trustee objected to confirmation of the Debtor’s original Plan, which was sustained at hearing on May 21, 2024, (Docket 24). The Debtor filed an Amended Plan on May 17, 2024 (Docket 20) but has failed to set it for a hearing for confirmation.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 31.

DEBTOR’S RESPONSE

Debtor filed a Response on September 4, 2024. Docket 39. Debtor acknowledges the delay in setting the Amended Plan for a confirmation hearing and takes full responsibility for this oversight. However, Debtor is in the process of filing a new Amended Plan that will address the Trustee’s concerns, including any delinquent payments and restructuring to better align with the case requirements. Resp. 2:1-11, Docket 39.

DISCUSSION

Delinquent

Debtor is \$872.20 delinquent in plan payments, which represents less than a month of the \$1,508.93 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 Motion to Confirm the Amended Plan

Debtor did not file a Motion to Confirm the most recently filed Amended Plan, nor did Debtor file any evidence in support of confirmation. Am. Plan, Docket 37. Debtor has noticed the hearing on that confirmation for October 8, 2024. Docket 40. No Motion to Confirm is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

As noted above, though no Motion to Confirm has been filed, the Debtor has filed a Notice of Hearing on Second Amended Chapter 13 Plan, which is set for October 8, 2024. The Notice states that Opposition must be filed and served at least fourteen days prior to October 8, 2024 – which would be September 24, 2024. Assuming the Notice was served on September 9, 2024, that allows only fourteen days notice of filing an opposition, and only twenty-nine days notice of the hearing.

Federal Rule of Bankruptcy Procedure 2002(a)(9) requires that at least 21 days notice must be given for filing objections to confirmation of a Chapter 13 Plan and Rule 2002(b) requires that at least 28 days notice be given of hearings to consider confirmation of a Chapter 13 Plan.

Under the Local Bankruptcy Rule 3015-1(c)(3), when a Plan is not timely filed within fourteen days of filing the bankruptcy petition, the Debtor must then prosecute confirmation of a Plan through a noticed motion as provided in L.B.R. 3015(d)(1). As provided in Local Bankruptcy Rule 3015-1(d)(1) specified that twenty-one days notice must be provided for the filing of oppositions to the Motion to confirm, and that such oppositions must be filed at least fourteen days before the confirmation hearing date. This requires at least thirty-five (35) days notice.

Though having stumbled over the Local Rules and not filing a Motion to Confirm the Amended Chapter 13 Plan, it does appear that Debtor and Debtor’s counsel are working to prosecute this case.

At the hearing, **XXXXXXX**

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 28, 2024. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on August 22, 2024.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.

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

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

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

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

FINAL RULINGS

16. [24-22917-E-13](#)

JERMAINE FORD
Candace Brooks

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-6-24 [26]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 7, 2024. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on August 1, 2024.

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

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

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

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

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

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

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 22, 2024. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on August 16, 2024.

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

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

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

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

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

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

DEBTOR DISMISSED: 08/12/24

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 8, 2024. The court computes that 41 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on August 12, 2024 (Docket 17), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

Final Ruling: No appearance at the September 18, 2024 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, Parties requesting special notice, and Office of the United States Trustee on August 6, 2024. By the court’s calculation, 43 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, moved to dismiss on the grounds no plan was pending after the court sustained Trustee’s Objection to the prior Plan on June 18, 2024. Mot. 1:24-27, Docket 22.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on August 15, 2024. Dockets 35, 39. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Decl., Docket 37. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity); however, the Declaration does not appear to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602. The Declaration lacks factual testimony to support an 11 U.S.C. § 1325(a) finding.

The Chapter 13 Trustee filed an Ex Parte Motion on September 11, 2024, requesting that the court dismiss this Motion to Dismiss, the Debtor being current in payments, the Plan confirmation hearing be set, and the motion to avoid lien also having been filed.

Notwithstanding the deficient Declaration, Debtor appears to be actively prosecuting this case, so the Motion to Dismiss is denied without prejudice.

Counsel for Debtor may well want to file a Supplemental Declaration for the Debtor to provide evidence in support of confirmation.

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

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

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

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

20. [24-20842-E-13](#) **WILLIAM/MARIA DE LOS** **MOTION TO DISMISS CASE**
[DPC-2](#) **SANTOS** **7-30-24 [32]**
 Colby LaVelle

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 30, 2024. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, William De Los Santos and Maria De Los Santos (“Debtor”), has not filed a Motion to Confirm their Amended Plan. The Trustee objected to confirmation of the Debtor’s original Plan, which was sustained at hearing on May 7, 2024 (Docket 27). Mot. 1:23-28, Docket 32.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 34.

DISCUSSION

Delay of Confirmation

Debtor did not a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 9, 2024. Docket 27. A review of the docket shows that Debtor has filed a new Plan, Docket 31, but Debtor has not filed a motion to confirm the Plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the September 18, 2024 hearing is required.

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

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

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

The Motion to Dismiss is denied without prejudice.

REVIEW OF THE MOTION

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

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

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 7, 2023. Dckt. 167. Debtor states there are two adversary proceedings, Case No.’s 22-02087 and 22-02088, and they have motions for entry of default judgment for both the adversaries. Debtor expects the default judgment will allow them to avoid two deeds of trust and obtain a reverse mortgage to pay off the Plan. Declaration, Dckt. 168.

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

DISCUSSION

Delinquent in Plan Payments

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

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

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

REQUEST FOR CONTINUANCE

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

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

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

October 18, 2023 Hearing

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

November 29, 2023 Hearing

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

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

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

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

January 17, 2024 Hearing

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

At the hearing, counsel for the Debtor reported that the reverse mortgage is taking longer than anticipated. Additionally, given the age of the case modification of the Plan is not a feasible alternative.

Counsel requested a continuance so that he could meet further with Debtor so they can make a final decision of whether this case will be converted to one under Chapter 7 or dismissed.

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

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

February 21, 2024 Hearing

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

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

March 26, 2024 Hearing

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

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

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

May 1, 2024 Hearing

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

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

The hearing on the Motion to Dismiss was continued to 9:00 a.m. on July 10, 2024.

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

July 10, 2024 Hearing

At the hearing held on May 1, 2024, counsel for the Debtor stated that the reverse mortgage has been approved and will be funding shortly. That will allow Debtor to fund the Plan in full. The Trustee concurred with the request for a continuance.

The court granted relief from stay to Creditor Nissan Motor Acceptance Company, LLC, on May 9, 2024. Docket 246.

On July 2, 2024, Debtor filed a Status Statement Pursuant to Opposition to Motion to Dismiss. Dckt. 247. Debtor states that he has funded the Plan with \$98,017.09 over the last 69 months, and that Debtor has been delayed in obtaining the reverse mortgage because of “title fraud” and a cloud on the title to his real property. Dckt. 247. The court entered Judgments removing the clouds on title on December 13, 2023. 22-2088; Judgment, Dckt. 57; and 22-2087; Judgment, Dckt. 59. These judgments were entered seven (7) months prior to the July 10, 2024 continued hearing on the Motion to Dismiss.

Debtor states that he now wants to sell the Property, rather than obtaining a reverse mortgage, and to either deny this Motion based on Debtor now saying he would sell the Property, or to continuing the hearing on the Motion to Dismiss for sixty (60) days.

The court’s review of the Docket on July 7, 2024, discloses that Debtor has not filed an ex parte motion to hire a real estate broker, notwithstanding his stated decision to sell the Property.

Debtor’s confirmed Modified Plan requires that a lump sum payment of \$9,000.00, the funds obtained through a reverse mortgage, be paid into the Plan by April 1, 2024. Mod. Plan, Additional Provisions; Dckt. 208.

In Debtor’s Status Report, Debtor states that he will no longer perform the confirmed Modified Plan, but instead will pursuant a non-plan sale of the Property and pay creditors outside of bankruptcy.

Debtor stating that the Plan will not be performed, the deadline for the final lump sum payment having been past, and Debtor now pursuing an extra-Plan marketing sale of the Property and paying creditors outside of bankruptcy, the Motion is granted and the Bankruptcy Case is dismissed.

At the hearing Debtor’s counsel pleaded for additional time, arguing that the denial of the reverse mortgage was a surprise and just recently communicated to the Debtor.

The Court orders the Debtor and Debtor's counsel to appear at the continued hearing.

SEPTEMBER 18, 2024 HEARING

The court continued the hearing from July 10, 2024, Debtor’s counsel pleading for more time and another continuance. The court ordered Debtor and counsel to appear in person. Order, Docket 252. On July 25, 2024, the court authorized Debtor to sell the real property commonly known as 12021 Gold Pointe Lane, Gold River CA 95670 (“Property”). Docket 262.

No updated information has been filed by the Debtor.

However, on September 6, 2024, a Notice of Completed Chapter 13 Plan Payments was filed by the Chapter 13 Trustee. Dckt. 263.

The Chapter 13 Trustee having filed his report that all Plan payments have been made and the Chapter 13 Trustee is preparing his final report, the delinquency in Plan payments has been cured.

The Plan having been completed, the Motion is denied without prejudice.

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

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

The Motion 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. 23-20658-E-13 DPC-1	STEVEN JIMENEZ Michael Hays	CONTINUED MOTION TO DISMISS CASE 6-17-24 [36]
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Final Ruling: No appearance at the September 18, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 17, 2024. By the court’s calculation, 58 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.

REVIEW OF THE MOTION

Trustee seeks dismissal of the case on the basis that:

September 18, 2024 at 9:00 a.m.
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1. The debtor, Steven Anthony Jimenez (“Debtor”), is delinquent \$922.00 in plan payments. Debtor will need to have paid \$1,142.00 to become current by the hearing date. Mot. 1:19-22, Docket 36.

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

DEBTOR’S RESPONSE

Debtor filed a Response and supporting Declaration on July 30, 2024. Dockets 40, 41. Debtor’s attorney, Mr. Hays, states the current delinquency is due to Mr. Hays’ mistake. Mr. Hays had his client’s money in their client trust account and failed to tender the payment to Trustee. Reply 1:24-25, Docket 40. Mr. Hays informs the court Trustee should have received the money to become current y July 25, 2024. *Id.* at 2:1-4.

DISCUSSION

Delinquent

Debtor is \$922.00 delinquent in plan payments, which represents multiple months of the \$110 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Having confirmed Debtor has cured the delinquency, at the hearing, counsel for the Debtor reported that he has transmitted the check, drawn on his trust account, on July 30, 2024. If it is returned, then counsel will obtain a cashier’s check.

Counsel for the Trustee reported that the trust account check would be accepted by the Trustee.

In light of the facts and circumstances of this case and Debtor’s performance, the Trustee requested that the hearing be continued.

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on September 18, 2024.

SEPTEMBER 18, 2024 HEARING

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 4, 2024, Docket 46; 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 Steven Anthony Jimenez (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

23. [24-21358-E-13](#)

CHARMAYNE SHULTZ
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-6-24 [57]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 7, 2024. The court computes that 42 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$78 due on August 1, 2024.

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

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

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

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

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

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

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 23, 2024. By the court’s calculation, 57 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Shaun Patrick Deitzel (“Debtor”), is delinquent \$11,362.23 in plan payments. Mot. 1:24-25, Docket 64.
2. Debtor’s Motion to Confirm an amended Plan, (Docket 48), was denied by the Court on May 21, 2024, (Docket 63). Debtor has failed to file an amended Plan and set for confirmation. *Id.* at 2:3-5.

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

DISCUSSION

Delinquent

Debtor is \$11,362.23 delinquent in plan payments, which represents multiple months of the \$3,692.23 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on May 21, 2024. Docket 63. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

25. [24-21763-E-13](#)

MARISA ORTIZ
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-2-24 [48]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 3, 2024. 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: \$78 due on July 29, 2024.

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

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

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

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

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

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

26. [21-23467-E-13](#) **CHARLEEN PERCOATS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mark Shmorgon** **7-17-24 [22]**

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 11, 2024, Docket 37; 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 Charleen Walker Percoats (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Docket 37, 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 denied without prejudice, and the bankruptcy case shall proceed in this court.

27. [24-21367-E-13](#) SVETLANA TKACHUK MOTION TO DISMISS CASE
[DPC-1](#) Pro Se 8-7-24 [19]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 11, 2024, Docket 33; 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 Svetlana Tkachuk (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Docket 33, 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 denied without prejudice, and the bankruptcy case shall proceed in this court.

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 13, 2024. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on August 7, 2024.

The Order to Show Cause is discharged without prejudice, the Bankruptcy Case having been converted to one under Chapter 7.

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.

On September 13, 2024, this case was converted to one under Chapter 7. The Debtor paid the conversion fee and has filed a Motion for Waiver of the Chapter 7 filing fee.

The Order to Show Cause is discharged without prejudice.

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

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

The 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 without prejudice, the Bankruptcy Case having been converted to one under Chapter 7.

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on August 21, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 13 bankruptcy case of Allen Dontony Gamble (“Debtor”) has been filed by David Cusick (“Movant”), the Chapter 13 Trustee. Movant asserts that the case should be converted based on the following grounds:

- A. Debtor is delinquent \$16,200.00 with another monthly payment of \$8,100.00 due prior to the hearing, meaning Debtor will need to pay \$24,300 to be current by the hearing date. Mot. 1:23-26, Docket 105.
- B. Debtor has failed to file an amended plan after the court sustained Movant’s Objection to the prior Plan on June 23, 2024. *Id.* at 1:27-2:2.
- C. Conversion is in the best interest of creditors as there is \$84,523 of non-exempt equity in his assets. 2:3-21.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

DISCUSSION

Here, Debtor is in material default under the terms of the proposed Plan, and Debtor has failed to file an amended plan after the court sustained the Objection to Confirmation of the previous Plan. *See* Docket 70.

Therefore, cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Convert the Chapter 13 case filed by David Cusick (“Movant”), 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

30. [24-23181-E-13](#)

MICHAEL/ANGELIQUE VALERA
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-26-24 [25]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 27, 2024. The court computes that 22 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on August 12, 2024.

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

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

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

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

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

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

31. [24-22984-E-13](#)

LUIS/KARLA SANCHEZ
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-13-24 [20]

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 14, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79 due on August 8, 2024.

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

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

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

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

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

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

32. [24-23590-E-13](#)

TODD DUNLOP
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-28-24 [15]**

DEBTOR DISMISSED: 09/04/24

Final Ruling: No appearance at the September 18, 2024 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 29, 2024. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the filing fee of \$313.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on September 4, 2024 (Docket 17), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

33. [23-22592-E-13](#)
[DPC-3](#)

AMANDA WILSON
Catherine King

**CONTINUED MOTION TO DISMISS
CASE
6-5-24 [67]**

Final Ruling: No appearance at the September 18, 2024 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, persons who have filed a Request for Notice, and Office of the United States Trustee on June 5, 2024 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).

The Motion to Dismiss is denied without prejudice.

REVIEW OF THE MOTION

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

1. The debtor, Amanda Wilson (“Debtor”), filed a Motion to Confirm an Amended Plan that was denied by the court on November 22, 2023. The Debtor has failed to file an amended Plan and set for confirmation. Mot. 1:23-25, Docket 67.

Trustee submitted the Declaration of Teryl Wegemer to authenticate the facts alleged in the Motion. Decl., Docket 43.

DEBTOR'S RESPONSE

Debtor's attorney, Catherine King, filed a Declaration on June 24, 2024. Docket 71. She was informed in a phone conversation with Debtor's nephew, Tyler Wilson, that Debtor has been in the hospital and therefore, had not received phone messages nor letters inquiring about the status of performing her proposed amended plan. *Id.* at 1:22-26. Tyler Wilson has both Health and Financial Power of attorney for Debtor herein and has verified both with Debtor's attorney's office. *Id.* Accordingly, he has authority to speak on behalf of debtor concerning her financial matters. *Id.*

Debtor's attorney Catherine King spoke to Tyler Wilson and he indicated that he has been speaking with the Debtor and they agreed and he had authority to communicate her wishes and thus, in light of her current serious health issues, she would like to sell the real property thereby not losing the equity in the home. *Id.* at 1:27-2:2. This would enable her to relocate to a location where she can better manage her health and complete her Chapter 13 plan. *Id.* at 2:2-3. Debtor's attorney states that a third amended plan to said effect and related motion shall be filed before the hearing on the trustee's motion to dismiss. *Id.* at 2:4-5. However, a review of the Docket on July 3, 2024 reveals that no such pleadings have been filed.

DISCUSSION

No Pending Plan

Debtor's Motion to Confirm Amended Plan (Docket 48) was denied by the Court on April 23, 2024. Mot. 1:23-25, Docket 67. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, the Debtor's attorney explained that Debtor has been in the hospital and unable to respond to any inquiries. Decl., Docket 71 at 1:22-26.

At the hearing, counsel for Debtor reported that Debtor has been released from the hospital but now needs to move into an assisted living facility.

Counsel for the Trustee concurred in a request for a continuance to allow a successor representative to be appointed if the Debtor cannot continue in prosecution of this Case.

SEPTEMBER 18, 2024 HEARING

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an *Ex Parte* Motion to Dismiss the pending Motion on July 30, 2024, Docket 84; 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 Amanda 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 an order substantially in the following form holding that:

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

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

IT IS ORDERED that the Dismiss is denied without prejudice.