

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 29, 2023 at 9:00 a.m.

1. [20-21543-E-13](#)
[DPC-1](#)

LIA MCKEOWN
Mikalalah Liviakis

MOTION TO DISMISS CASE
10-23-23 [\[18\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on October 23, 2023. 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 denied without prejudice.
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Lia McKeown ("Debtor"), is delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 14, 2023. Dckt. 23. Debtor submits her own Declaration in support. Declaration, Dckt. 25. Debtor states she was delinquent because she mistakenly believed her Plan had concluded; however, upon learning that one final payment of \$606.23 was due, Debtor has paid and cured the delinquency. On November 28, 2023, attorney for the Trustee notified the courtroom

deputy that she will not be pursuing this Motion and request it be denied without prejudice because Debtor has made the final plan payment.

At the hearing, **xxxxxxx**

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

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.~~

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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Persons who have filed a Request of Notice on November 13, 2023. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

1. The debtor, Reba C. Danridge ("Debtor"), is delinquent \$100.00 in Plan payments to the Trustee and the next scheduled payment is due on November 25, 2023. The Plan under § 2.01 calls for payments to be received by the Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date.
2. The Debtor failed to attend the first Meeting of Creditors as required by 11 U.S.C. § 343. The Meeting has been continued to January 25, 2024.
3. Based on the Schedule I and the Statement of Financial Affairs provided by the Debtor, the Debtor has no income and appears to be ineligible to be a debtor under 11 U.S.C. § 109(e). Since there is \$2,450.00 in non-exempt equity in the assets listed on Schedules A/B, the Trustee believes there is

little non-exempt equity in the assets for creditors if the case were converted to one under Chapter 7. Therefore, the Trustee believes a conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt. 27.

DISCUSSION

No Plan Payments Made / Failed to Commence Plan Payments

Debtor did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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).

No Regular Income

Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, noncontingent, liquidated, debts of less than \$2,750,000.00 may be a debtor under Chapter 13. Here, the Debtor states on Schedule I that she is not employed, and leaves the combined monthly income line blank. Schedule I, Dckt. 13. On the Statement of Financial Affairs, the Debtor states that she does have an income during this year or the previous two years from wages, commissions, bonuses, and/or tips, but does not fill in the details. Statement, Dckt. 13. On the Summary of Assets and Liabilities, the Debtor indicates an income of \$9,888.00, but that information was not listed on Schedule I. Summary, Dckt. 13. From the information provided, the Court is unable to determine that the Debtor is an individual with a regular income pursuant to 11 U.S.C. § 109(e).

Review of Proposed Plan

Debtor's proposed Plan, Dckt. 14, has caught the objections of the Chapter 13 Trustee and two creditors. On its face, the Chapter 13 Plan states that there will be \$100 a month plan payments to be made by Debtor for an unstated period of months. Plan, ¶¶ 2.01, 2.03; Dckt. 14. The Plan terms are left blank and no provisions are made for payment of any creditor claims.

On Schedule D, Debtor lists one creditor, Serbank, having a claim secured by Debtor's residence. Sch. D; Dckt. 13 at 15-17. The amount of the Claim is stated to be (\$165,000) and the value of Debtor's interest in the property is stated to be \$100,000. On Schedule A Debtor states being the sole owner of the property, that the property's value is \$150,000, and that the value of the Debtor's interest in the property is only \$100,000. *Id.* at 3.

As the Chapter 13 Trustee notes, on Schedule I, Debtor lists having no income. *Id.* at 27-28. On the Statement of Financial Affairs, Debtor states that Debtor had no income from any sources in 2023, 2022, and 2021. Stmt. of Fin Affairs, ¶¶ 4, 5; *Id.* at 33-34.

This further puts into question why Debtor has filed this Chapter 13 Case and Debtor's ability to prosecute this case. Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

3. 23-23308-E-13	REBA DANRIDGE Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-27-23 [20]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on October 29, 2023. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on October 23, 2023.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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.

4. 23-23508-E-13

KRISTIN VRABLICK
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
11-9-23 [21]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. 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 November 11, 2023. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 6, 2023.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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—No Opposition Filed.

Sufficient Notice Not Provided.

The court cannot determine whether notice has been properly provided as Movant has not complied with Local Bankruptcy Rule 7005-1, which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rules of Bankruptcy Procedure 7005, 7007, and 9014(c).

At the hearing, **XXXXXXXXXX**.

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).

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

1. The debtor, Tiesha Fisher ("Debtor"), is delinquent \$1,736.00 in Plan payments. The Debtor's monthly payment is \$439.00. Prior to the hearing, another two plan payments will become due. Therefore, the Debtor will need to pay \$2,614.00 to bring the Plan current by the date of the hearing.
2. There is \$0.00 in non-exempt equity in the assets listed on Schedules A/B, leading the Trustee to believe that conversion to a Chapter 7 is not in the best interests of the creditors or the estate.

DISCUSSION

Delinquent

Debtor is \$1,736.00.00 delinquent in plan payments, which represents multiple months of the \$439.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

6. 22-20815-E-13 DPC-3	JAMES JOHNSON Candace Brooks	CONTINUED MOTION TO DISMISS CASE 9-20-23 [45]
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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, persons who have filed a Request for Notice and Office of the United States Trustee on September 20, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXX.

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

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

DEBTOR’S OPPOSITION

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

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

9. The Debtor requests that the Trustee's Motion to Dismiss be continued so that he may find out the decision of the mortgage assistance. At that time, the Debtor will know which course of action that he will need to take and will do so immediately. Declaration, Dckt. 50.

DISCUSSION

Delinquent

Debtor is \$110,370.72 delinquent in plan payments, which represents the lump sum that the Debtor was to pay in month 15 after selling his real property to complete the Plan at 100% for all creditors. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

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

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

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

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

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

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

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

November 29, 2023 Hearing

As of the court's November 27, 2023 review of the Docket, no further pleadings have been filed by Debtor. At the hearing, **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 hearing on the Motion to Dismiss is **XXXXX**

7. [23-22329-E-13](#) **GREGORY JACKSON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Eric Schwab** **10-30-23 [21]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request of Notice and Office of the United States Trustee on October 30, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Gregory Todd Johnson (“Debtor”), is delinquent in plan payments to the Trustee. The Debtor owes \$12,420.00, and the next scheduled payment of \$4,140.00 will be due on November 25, 2023, prior to this hearing. The Debtor has not made any payments to the Plan to date. The Debtor will need to pay a total of \$16,560.00 by the hearing date to be current.

2. The Debtor has failed to file an amended Plan and set it for Confirmation.
3. The Debtor has not amended Schedule D of their petition to list SAFE Credit Union and Santander Consumer USA, both with security interests in vehicles.
4. There is potentially \$37,672.00 in non-exempt equity in the assets listed on Schedules A/B. However, if one of the assets is secured by a loan, it will decrease the liquidation amounts. Therefore, because the secured and priority debt is greater than the amount that the non-exempt equity to be realized in the event of a conversion to a Chapter 7, the Trustee believes that conversion is not in the best interest of the creditors or the estate.

Motion, Dckt. 21.

DEBTOR'S RESPONSE

Debtor filed a Response on November 15, 2023. Dckt. 25. Debtor's counsel states that on or before the hearing date he will receive \$12,420.00 to be paid to the Trustee, and will pay the Plan current by the first week of December with his next pension check. Response, Dckt. 25. Additionally, the Debtor intends to file a motion to confirm a Plan that addresses the issues raised by the Trustee. *Id.*

DISCUSSION

Delinquent

Debtor is \$12,420.00 delinquent in plan payments, which represents multiple months of the \$4,140.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 27, 2023. Order, Dckt. 18. 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).

Failure to Provide for a Secured Claim

Trustee asserts that the Debtor has failed to amend his Schedule D to account for the secured claims of two creditors on two vehicles. Santander Consumer USA Inc., has filed a secured claim of \$25,379.51 in this case, secured by a 2014 Chevrolet Corvette. Proof of Claim, Dckt. 3-1. Debtor's Schedule D does not provide for this claim. This failure does not allow the Trustee or the court to determine whether or not a conversion is beneficial for creditors or the estate.

No Evidence For Factual Assertion

A promise to pay and file a modified plan is not evidence that resolves the Motion.

At the November 29, 2023 hearing, **XXXXXXX**

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

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

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

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

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

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

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

Sufficient Notice Not Provided.

The court cannot determine whether notice has been properly provided as Movant has not complied with Local Bankruptcy Rule 7005-1, which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rules of Bankruptcy Procedure 7005, 7007, and 9014(c). At the hearing, **XXXXXXXXXX**.

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).

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

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

1. The debtors, Robert James McGee and Adriane Lynn McGee ("Debtor"), is delinquent \$2,094.00 in Plan payments. The Debtor's monthly payment is \$700.00. Prior to the hearing, another two plan payments will become due. As a result, the Debtor will need to pay \$3,494.00 in order to bring this Plan current by the date of the hearing.
2. There is \$0.00 in non-exempt equity in the assets listed on Schedules A/B. Therefore, because there is no non-exempt equity to be realized in the event of a conversion to a Chapter 7, the Trustee believes that conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt. 44.

DISCUSSION

Delinquent

Debtor is \$2,094.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Persons who have filed a Request for Notice on November 1, 2023. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss and Motion to Convert 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 is granted and the Bankruptcy Case is converted to one under Chapter 7.</p>

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal or conversion to Chapter 7 of the case on the basis that:

1. The debtor, Benjamin Krishtopher Verma ("Debtor"), is delinquent in Plan payments to the Trustee. The Debtor owes \$15,600.00 and the next scheduled payment of \$5,200.00 is due on November 25, 2023. The Debtor last paid on July 31, 2023 and the Plan calls for payments to be received by the Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$15,203.00 into the Plan to date.
2. The Debtor has no confirmed Plan, has proposed two Plans to date where the last Plan was denied confirmation on September 13, 2023, and no new Plan has been proposed.
3. There is at least \$55,691.83 in non exempt equity in the assets listed on Schedules A/B. Where the Plan proposes to pay 100% to unsecured creditors, the Trustee believes that conversion to a Chapter 7 is not in the best interests of the creditors or the estate. However, the Trustee also states

that the Debtor's original plan called for a refinance of their real property, so it would appear that sufficient equity may exist that creditors will be better off in a Chapter 7 proceeding.

CREDITOR'S RESPONSE

Barry W. Morse, Inc. ("Creditor") filed a Response on November 14, 2023. Dckt. 62. Creditor states it supports the Trustee's motion, but it is unclear whether conversion is in the best interest of the creditors under 11 U.S.C. § 1307(c). Response, Dckt. 62. The Creditor notes that the Trustee stated that there may be \$55,691.83 in non-exempt equity, appearing to be based on a Mercedes S63 AMG Coop ("Vehicle") valued at \$53,495.00. *Id.* The Creditor has sought confirmation from the Debtor that the Vehicle is unencumbered, and is awaiting a response. *Id.* The Creditor seeks Discovery as allowed under Federal Rule of Bankruptcy Procedure 9014(c) to see if the Vehicle is encumbered. *Id.* If the Vehicle is fully encumbered, the Creditor asserts that dismissal would be the best interest of the estate. *Id.*

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 15, 2023. Dckt. 65. Debtor states that to date, the Debtor has paid a total of \$15,203.00 to the Trustee. Declaration, Dckt. 66. Further, the Debtor notes that he just started a new job, with a mandatory full-time training without pay for the months of September and October, which is now his second source of income. *Id.* The Debtor will file, set, and serve an amended Plan before the hearing on this matter. *Id.*

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

Delinquent

Debtor is \$15,600.00 delinquent in plan payments, which represents multiple months of the \$5,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, New Plan Filed

A review of the docket on November 27, 2023 reveals that Debtor did file a new Plan on November 22, 2023. Plan, Dckt. 70.

Amended Plan and Motion to Confirm Filed

On November 22, 2023, the Debtor filed a Second Amended Chapter 13 Plan and Motion to Confirm. The terms of the Second Amended Plan are summarized as follows:

- A. Plan term.....60 months. Second Amd Plan, ¶ 2.03; Dckt. 70.
- B. Plan Payments; *Id.*, § 7:
 - 1. Months 1-6.....\$15,203.00 aggregate.
 - 2. Months 7 - 60.....\$13,856.02 per month.
 - 3. Unsecured Claims Interest.....4.72%
- C. No Class 1 Claims.
- D. Class 2.....(\$10,285) monthly claim payments. *Id.*, ¶ 3.08.
- E. No Class 2, 3, 4, 5, or 6 claims.
- F. Class 7 General Unsecured Claims.....100% Dividend + 4.72% interest.

Conversion

In this case, under the original Plan that was denied, the Debtor sought to refinance his real property, showing there could be enough equity in real property that conversion to a Chapter 7 may be in the best interest of creditors. Motion, Dckt. 58. On the other hand, Creditor believes the equity stems from the Vehicle, dependent on whether the Vehicle is encumbered. Response, Dckt. 62.

The evidence of assets of the Debtor and their value which has been presented to the court consists of the Debtor's Schedules. These assets of significant value include:

- A. Vehicles
 - 1. 2013 Lexus (138,000 miles)
 - a. Value.....\$10,438
 - b. Liens.....(\$ 3,126) POC 4-1

- c. Exemption.....(\$ 7,311) § 703.140(b)(2)
- 2. 2011 Ford F150 (131,000 miles)
 - a. Value.....\$ 9,800
 - b. Liens.....\$ 0.00
 - c. Exemption.....(\$7,414) § 703.140(b)(5)
 - d. Exemption.....(\$ 188) § 703.140(b)(2)
- 3. 2016 Mercedes (30,000 miles)
 - a. Value.....\$53,495
 - b. Liens.....\$ 0.00
 - c. Exemption.....\$ 0.00
- 4. Residence
 - a. Value.....\$535,000
 - b. Liens
 - (1) DOT.....(\$464,865) POC 5-1
 - (2) Sac County.....(\$ 1,842) POC 8-1
 - (3) Prop Taxes.....(\$ 13,416) POC 9-1
 - c. Exemption.....(\$ 24,034)

Amd Sch A/B, Dckt. 52; and Amd Sch C, Dckt. 42.

Based on Debtor's Amended Schedules A/B and C, the Bankruptcy Estate has \$53,495 in non-exempt equity in the 2016 Mercedes. Even after allowing for costs of sale, there is a significant recoverable amount for the Estate.

Supplemental Schedules I and J

Debtor has filed Supplemental Schedule on which he lists his new employment and projects having \$10,000.00 a month in net income from his business. Dckt. 74 at 4-5. Debtor also lists an additional \$3,550 in after tax income from a life insurance policy. *Id.* On the Business Income and Expenses attachment to Supplemental Schedule I, Debtor lists (\$1,500) a month in income and self employment taxes for a projected \$12,400 a month in gross income. *Id.* at 8.

On Supplemental Schedule J, Debtor lists a family unit of three persons - Debtor and two teenage children. *Id.* at 6-7. For these three persons, Debtor lists having reasonable and necessary monthly expenses of only (\$2,000.00). *Id.* Some of these expenses appear to be questionably low, including:

- A. Home maintenance and repair expenses.....(\$ 0.00)

- B. Food and housekeeping supplies.....(\$800)
 - 1. Assuming (\$50) a month for housekeeping supplies, then that leaves (\$2.77) per person per meal in a thirty day month.
- C. Medical and dental expenses.....(\$25)
- D. Clothing and laundry.....(\$50) [(\$16.65) per person]
- E. Transportation (fuel, maintenance, repair).....(\$350)
- F. Health insurance.....(\$ 0.00)

These are the expenses for the sixty (60) months of the Plan.

Debtor's Declaration

Debtor discusses in his Declaration income from a "second job," though non second job source of income is shown on Supplemental Schedule I.

At the hearing, **XXXXXXXXXX**

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). ~~The Motion to Convert is granted and the case is converted to a case under Chapter 7. Because conversion is in the best interest of creditors, the Motion to Dismiss 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.~~

~~**IT IS FURTHER ORDERED** that 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.~~

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, persons having filed a Request for Notice, and Office of the United States Trustee on October 19, 2023. By the court's calculation, 41 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). The defaults of the respondent and other parties in interest are entered.

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, Alice Jordan ("Debtor"), is delinquent in plan payments. Trustee has tried to reach a stipulation with Debtor and the mortgagee of Debtor's residence in this case to clarify the interest on arrears and required plan payment, but has been unsuccessful. Debtor is delinquent without this stipulation because Trustee is paying more toward the mortgage than Debtor originally anticipated in her Plan.

At the hearing, **XXXXXXXXXX**

DISCUSSION

Delinquent

Debtor is \$5,595.12 delinquent in plan payments, which represents multiple months of the \$1,601.68 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

11. [21-23841](#)-E-13
[DPC-3](#)

DENNIS FRAZIER
Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
9-20-23 [116]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on September 20, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXX.

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

1. The debtor, Dennis Frazier (“Debtor”), is delinquent \$4,800.00 in plan payments.
2. Another payment of \$1,750.00 will come due before the hearing date.

3. Debtor has not filed an amended/modified plan since the court denied Debtor's Motion to Confirm an Amended Plan on January 10, 2023. Dckt. 115.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 3, 2023. Dckt. 120. Debtor states it is awaiting the court's ruling on a disputed claim before he files an amended/modified plan. Debtor does not discuss the delinquency.

DISCUSSION

Delinquent

Debtor is \$4,800.00 delinquent in plan payments, which represents multiple months of the \$1,750.00 plan payment. Before the hearing, another plan payment will be due. Although Debtor explains why he has not filed an amended plan, Debtor has not addressed the outstanding delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, counsel for the Debtor reported that they resolved the dispute with the main creditor (the "Foreclosure Consultant" secured claim), a stipulation has been filed waiving rights to post-judgment fees and costs in the Adversary Proceeding, and that Debtor will promptly be moving forward with prosecution of a Plan.

The Trustee concurred in the request for a continuance.

November 29, 2023 Hearing

A review of the Docket on November 27, 2023 reveals that no new filings have been entered.

On October 11, 2023, the court entered its Memorandum Opinion and Decision, and Judgment pursuant thereto in Adversary Proceeding 22-2008, determining that: (1) Carl Dexter, Trustee of First Trust has a claim for (\$39,705.53) in this Bankruptcy Case; (2) Carl Dexter, Trustee, does not have any interest in any property of the Bankruptcy Estate, other than a lien to secure the (\$39,705.53) claim; and (3) that the (\$39,705.53) claim obligation is dischargeable. 22-2008; Dckts. 57, 59.

It may be, with the court having resolved by final judgment the dispute between the Debtor and Carl Dexter, Trustee, the Parties may be proceeding with a non-bankruptcy resolution of this debt.

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 **XXXXX**.

12. [23-23242](#)-E-13

BRYAN GALLINGER
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-24-23 [21]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 October 24, 2023. 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: \$79.00 due on October 19, 2023.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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, 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 hearing on the Motion to Dismiss is continued to 9:00 a.m. on January 17, 2024.

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, **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 hearing on the Motion to Dismiss is continued to **9:00 a.m. on January 17, 2024.**

14. [19-23657-E-13](#)
[DPC-2](#)

TONY SMITH
Julius Cherry

MOTION TO DISMISS CASE
10-18-23 [48]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on October 18, 2023. 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). 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.

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

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

1. The debtor, Tony Ray Smith (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$5,300.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due, meaning Debtor will need to pay \$8,300.00 to cure the delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

15. [19-26957-E-13](#)
[DPC-5](#)

MARK HAYNES
Mark Shmorgon

MOTION TO DISMISS CASE
10-26-23 [160]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on October 26, 2023. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXX.

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

1. The debtor, Mark Haynes (“Debtor”), is \$5,727.00 delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 15, 2023. Dckt. 165. Debtor admits to the delinquency but states the delinquency will be cured prior to the hearing date. Declaration, Dckt. 166.

At the hearing, **xxxxxxxxxx**

Delinquent

Debtor is \$5,727.00 delinquent in plan payments, which represents multiple months of the \$1,909.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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 **xxxxx**.

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, persons having filed a Request for Notice, and Office of the United States Trustee on October 6, 2023. 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.

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

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

1. The debtor, Brian Murphy ("Debtor"), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$4,213.72 delinquent in plan payments, which represents multiple months of the \$2,106.86 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

17. [23-22870-E-13](#)
[DPC-2](#)

LINDA KEIFER
Pro Se

MOTION TO DISMISS CASE
10-30-23 [22]

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, persons having filed a Request for Notice, and Office of the United States Trustee on October 30, 2023. 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.

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

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

1. The debtor, Linda Keifer (“Debtor”), proposed a blank Plan.

2. Debtor failed to appear at the meeting of creditors on October 12, 2023.
3. Debtor did not provide 11 U.S.C. § 521 documents, including payment advices and tax transcripts or tax returns.
4. The Schedules and forms submitted contain errors and discrepancies.
5. Since 2019, Debtor has filed three cases prior to this case, all ending in dismissal.

DISCUSSION

Blank Plan

11 U.S.C. § 1325(a)(1) provides for confirmation of a plan if it complies with Chapter 13 provisions and other applicable Code provisions. Here, Debtor has proposed a plan that is woefully lacking in compliance with the Bankruptcy Code. Debtor has not proposed any plan payments or any other terms in the Plan, including payments to Classes 1–6 or a dividend amount to Class 7. The Plan does not comply with 11 U.S.C. § 1325(a)(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 File Documents Related to Petition

Trustee filed a Motion to Dismiss based on Debtor's failure to file payment advices and tax documents. Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Filings

As the Trustee notes, and detailed in an earlier Objection to Confirmation, Debtor has filed and had dismissed several prior bankruptcy cases: 22-20966, filed April 18, 2022, dismissed August 26, 2022; 21-23191, filed September 9, 2021, dismissed October 8, 2021; and 19-23831, filed June 17, 2019, dismissed July 16, 2019.

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.

18. [18-25581-E-13](#)
[DPC-12](#)

DANIELLE DELGADO
Mary Ellen Teranella

MOTION TO DISMISS CASE
10-18-23 [178]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Special Notice and Office of the United States Trustee on October 18, 2023. 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, Danielle Nicole Delgado (“Debtor”), is delinquent \$1,920.00 in Plan payments. The Debtor has paid a total of \$27,614.91, with the last payment received on June 27, 2023. The Debtor’s monthly payment is \$480.00. Prior to the hearing, two payments of \$480.00 will become due. The Debtor will need to pay \$2,880.00 in order to bring the plan current by the date of the hearing.
2. There is \$0.00 in non-exempt equity in the assets listed on Schedules A/B. Therefore, because there is no non-exempt equity to be realized in the event of a conversion to a Chapter 7, the Trustee believes that conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt 178.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 13, 2023. Dckt. 182. Debtor states that she initiated two electronic plan payments, one for November 10, 2023 and the other for November 20, 2023, both in the amount of \$1,440.00. Exhibit A, Dckt. 183. Additionally, the Debtor notes that she filed a Motion to Modify Plan, which was heard on August 11, 2020, which provided for an extension of the Plan term to 68 months, as allowed under the CARES Act. Order, Dckt. 107. Although the Debtor has struggled throughout her Plan, she is very close to completing it and believes she will be able to do so. Opposition, Dckt. 182.

DISCUSSION

Delinquent

The Trustee states that the Debtor is \$1,920.00 delinquent in plan payments, which represents multiple months of the \$480.00 plan payment. The Trustee also states that before the hearing, another two plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

However, the Debtor states that she has paid the Trustee the due amounts, and provides for the transactions in Exhibit A. Dckt. 183. The Debtor's Attorney submits a Declaration explaining that the Debtor provided her with the transactions via email. Declaration, Dckt. 184.

At the hearing, **XXXXXXX**

~~Based on the foregoing, cause does not exist to dismiss this case. The Motion is denied.~~

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, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 29, 2023. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on October 23, 2023.

<p>The Order to Show Cause is sustained, and the case is dismissed.</p>
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The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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—No Opposition Filed.

Sufficient Notice Not Provided.

The court cannot determine whether notice has been properly provided as Movant has not complied with Local Bankruptcy Rule 7005-1, which requires the use of a specific Eastern District of California Certificate of Service Form (Form EDC 007-005). This required Certificate of Service form is required not merely to provide for a clearer identification of the service provided, but to ensure that the party providing the service has complied with the requirements of Federal Rule of Civil Procedure 5, 7, as incorporated into Federal Rules of Bankruptcy Procedure 7005, 7007, and 9014(c). At the hearing, **XXXXXXXXXX**.

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).

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, David and Kathleen Halford (“Debtor”), is delinquent in plan payments.

DISCUSSION

Delinquent

Debtor is \$9,900.00 delinquent in plan payments, which represents multiple months of the \$1,800.00 plan payment. Before the hearing, another two plan payments will be due, bringing the delinquency to \$13,500.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

FINAL RULINGS

21. [18-23297](#)-E-13
[DPC](#)-4

ROWENA GARCIA
Kristy Hernandez

MOTION TO DISMISS CASE
10-23-23 [\[69\]](#)

Final Ruling: No appearance at the November 29, 2023 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal on November 22, 2023, Dckt. 77; no prejudice to the responding party appearing by the dismissal of the Motion to Dismiss; 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 Rowena Garcia (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion to Dismiss 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 filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 77, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the November 29, 2023 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, Persons who have filed a Request for Notice, and Office of the United States Trustee on October 30, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Stanley Philips Berman (“Debtor”), is delinquent in Plan payments to the Trustee. The Debtor owes \$1,002.72, and the next scheduled payment of \$334.24 will be due on November 25, 2023. The Debtor has paid \$334.24 to date.
2. The Debtor has failed to file an amended Plan and set it for confirmation. The Trustee and a Creditor have both objected to the Debtor’s original Plan and both Objections were sustained on September 12, 2023. Order, Dckt. 31, 32.
3. There is \$1,115.00 in non-exempt equity in the assets listed on Schedules A/B of the Debtor. Since the non-exempt equity is minimal, the Trustee believes that conversion to a Chapter 7 is not in the best interests of the creditors or the estate.

Motion, Dckt. 35.

DISCUSSION

Delinquent

Debtor is \$1,002.72 delinquent in plan payments, which represents multiple months of the \$334.24 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 12, 2023. 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.

23. 19-26101 -E-13 DPC-4	JUDITH HART Justin Kuney	CONTINUED MOTION TO DISMISS CASE 8-16-23 [135]
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Final Ruling: No appearance at the November 29, 2023 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal on November 22, 2023, Dckt. 145; no prejudice to the responding party appearing by the dismissal of the Motion to Dismiss; 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 Judith Hart ("Debtor"); the *Ex Parte* Motion is granted, the Chapter

13 Trustee's Motion to Dismiss 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 filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 145, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. 22-21133 -E-13	MARIA FATIMA IBASAN	MOTION TO DISMISS CASE
DPC -2	Gabriel Liberman	10-25-23 [33]

Final Ruling: No appearance at the November 29, 2023 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons having filed a Request for Notice, and Office of the United States Trustee on October 25, 2023. 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 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, Maria Fatima Ibasan (“Debtor”), is in material default in the Plan.

DISCUSSION

Delinquent

Debtor is \$25,361.60 delinquent in plan payments, which represents multiple months of the \$4,245.88 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the November 29, 2023 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), creditors, and Chapter 13 Trustee as stated on the Certificate of Service on October 19, 2023. 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 required fees in this case: \$32.00 due on October 5, 2023.

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.

9-5-23 [\[19\]](#)

CASE CONVERTED: 09/19/23

Final Ruling: No appearance at the November 29, 2023 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 September 5, 2023. The court computes that 65 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on August 30, 2023.

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

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

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

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

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

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

DEBTOR DISMISSED: 10/19/23**Final Ruling:** No appearance at the November 29, 2023 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 October 10, 2023. The court computes that 50 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on October 19, 2023 (Dckt. 44), 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, this Bankruptcy Case having been dismissed (Order; Dckt. 44) 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 November 29, 2023 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 having filed a Request for Notice, and Office of the United States Trustee on October 26, 2023. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Dismiss is continued to 9:00 a.m. on January 17, 2024.

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

1. The debtor, Cory and Stacie Guthrie (“Debtor”), is delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on November 14, 2023. Dckt. 36. Debtor filed a Declaration in support of its Opposition. Declaration, Dckt. 38.

The Opposition recounts that the existing Chapter 13 Plan has been funded with \$75,340.00 to date, of which (\$26,642.72) has been disbursed to pay in full the claim secured by Debtor’s vehicle and (\$41,107) has been paid to creditors holding general unsecured claims.

Though Debtor’s “plan” was to stay employed by Redding Electric Utility through the life of the Chapter 13 Plan, his earning being sufficient to fund the Plan. However, in September of 2022, Debtor was presented with the opportunity for private sector employment, so Debtor elected to retire, collect both the PERS and PARS funded pensions, and then work in the private sector. Unfortunately, the private sector work slowed and then in August 2023, the employment was terminated.

This resulted in the loss of income that led to the defaults.

In October 2023, Debtor has been re-employed by the Redding Electric Utility as a retired annuitant who can work up to 960 hours a year (which averages 20 hours a week). Because Debtor did not receive the retired annuitant income until mid-October 2023, the September and October 2023 monthly plan payments could not be made in full.

Debtor Cory Blake Guthrie provides his Declaration to go with the Opposition. Dec.; Dckt. 38. He recounts his income journey, the opportunity for the higher private sector income, election to retire, and then the loss of the private sector income.

In his Declaration, Debtor states he is delinquent because he was unexpectedly laid off from a contract position. Debtor informs the court he will file a new modified plan to cure the delinquency.

Request to Continue the Hearing

In the Opposition, Debtor requests that the hearing on this Motion be continued to January 9, 2024, based upon the anticipated prosecution of a motion to confirm a modified plan.

DISCUSSION

Delinquent

Debtor is \$14,348.00 delinquent in plan payments, which represents multiple months of the \$3,737.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). However, Debtor informs the court he will be filing a modified plan to address the delinquency. A review of the Docket on November 27, 2023 reveals no such plan has yet been filed.

Though as of November 27, 2023, no proposed Modified Plan and Motion to Confirm have been filed, thereby precluding having a properly noticed confirmation hearing by the end of 2023, the court believes that the facts and circumstances of this Case warrant a continuance. Debtor has a reliable income source (publicly funded pensions). Additionally, the Plan in this Case has been substantially funded, showing that the Debtor has been able to move this Case substantially forward.

The court continues the hearing, affording Debtor's counsel and Debtor to continue to concentrate on getting the modified plan and motion to confirm on file and set for hearing.

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 hearing on the Motion to Dismiss is continued to **9:00 a.m. on January 17, 2024.**

29. [23-21945](#)-E-13

VIRGIL EVANS
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
10-18-23 [60]

DEBTOR DISMISSED: 10/20/23

Final Ruling: No appearance at the November 29, 2023 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 October 18, 2023. 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: \$78.00 due on October 13, 2023.

The Order to Show Cause is discharged as moot, this Bankruptcy Case having been dismissed.

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured. However, on October 20, 2023, the court ordered this case 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 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, this case having been dismissed.

Final Ruling: No appearance at the November 29, 2023 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 October 3, 2023. The court computes that 57 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 28, 2023.

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

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

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

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

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

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

DEBTOR DISMISSED: 10/16/23

Final Ruling: No appearance at the November 29, 2023 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 October 11, 2023. The court computes that 49 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on October 16, 2023 (Dckt. 13), the Order to Show Cause is discharged as moot, with no sanctions ordered, the bankruptcy case having been 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 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, the bankruptcy case having been dismissed, and no sanctions are ordered.

DEBTOR DISMISSED: 10/16/23

Final Ruling: No appearance at the November 29, 2023 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 October 6, 2023. The court computes that 54 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on October 16, 2023 (Dckt. 28), 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, this bankruptcy case having been dismissed.

Final Ruling: No appearance at the November 29, 2023 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick ("the Chapter 13 Trustee") having filed a Notice of Dismissal on November 22, 2023, Dckt. 64; no prejudice to the responding party appearing by the dismissal of the Motion to Dismiss;

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 Jeremy Wygal (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion to Dismiss 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 filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 64, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

34. 20-22366-E-13	PHILIP/YVETTE HOLDEN	MOTION TO DISMISS CASE
DPC-3	Matthew Gilbert	10-6-23 [77]

DEBTORS DISMISSED: 11/05/23

Final Ruling: No appearance at the November 29, 2023 hearing is required.

The case having previously been dismissed by Order of this court on November 5, 2023 (Dckt. 92), the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

Final Ruling: No appearance at the November 29, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Persons who have filed a Request for Notice on October 6, 2023. 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.

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

1. The debtor, Ryan Dean Beck and Sharlene Summers Beck ("Debtor"), is delinquent in plan payments to the Trustee. The Debtor owes \$6,360.00 and the next scheduled payment of \$3,228.43 is due on October 25, 2023. The Plan in § 2.01 calls for payments to be received by the Trustee no later than the 25th day of each month following the order for relief under Chapter 13. The Debtor has paid \$19,466.46 to date.
2. There is \$10,856.37 in non-exempt equity in the assets listed on Schedules A/B. Where the Plan proposes to pay 100% to unsecured creditors, the Trustee believes that conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt. 33.

DISCUSSION

Delinquent

Debtor are \$6,360.00 delinquent in plan payments, which represents multiple months of the \$3,228.43 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the November 29, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on November 1, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Ernesto Reyes Placencio (“Debtor”), is delinquent in Plan payments to the Trustee. Debtor owes \$4,126.64 and the next scheduled payment of \$2,283.00 is due on November 25, 2023. The Debtor has paid \$9,571.36 into the Plan to date.
2. The Debtor has failed to file an amended Plan and set it for confirmation. The Debtor’s prior Motion to Confirm an amended Plan was denied on August 8, 2023. Order, Dckt. 36.
3. There is \$0.00 in non-exempt equity in the assets listed on Schedules A/B. Therefore, because there is no non-exempt equity to be realized in the event of a conversion to a Chapter 7, the Trustee believes that conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt. 37.

DISCUSSION

Delinquent

Debtor are \$4,126.64 delinquent in plan payments, which represents multiple months of the \$2,283.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 8, 2023. 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.

Final Ruling: No appearance at the November 29, 2023 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 November 15, 2023. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on November 8, 2023.

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

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

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

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

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

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

Final Ruling: No appearance at the November 29, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on October 30, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

1. The debtor, Gregory Wayne French and Cho Yon French ("Debtor"), is delinquent in their Plan payments to the Trustee. The Debtor owes \$20,642.00 and the next scheduled Plan payment of \$5,959.00 will be due on November 25, 2023. The Debtor has paid \$15,970.00 into the Plan to date. Debtor will need to pay \$26,601.00 to be current by the hearing date.
2. The Debtor has failed to file an amended Plan and set it for confirmation. The Debtor's Motion to Confirm an amended Plan was denied by the court on August 22, 2023. Order, Dckt. 56.
3. The Debtor has failed to amend the Form 122C-1 and the Trustee is concerned that the Debtor has more income and the means test was not accurately computed. The Debtor has not amended their Schedules A/B and the Trustee is still concerned they didn't list all of their assets. The Debtor did not amend their Statement of Financial Affairs to show gambling transactions listed on the Golden 1 Credit Union bank statement. The

Debtor has not amended Schedule I to list any 401(k) loan(s) or “Employee Loan”.

4. There is \$19,708.00 in non-exempt equity in the assets listed on Schedules A/B. However, the Internal Revenue Service and Franchise Tax Board have priority claims. Since the priority debts are greater than the non-exempt equity to be realized in the event of a conversion to a Chapter 7, the Trustee believes that conversion to a Chapter 7 is not in the best interest of the creditors or the estate.

Motion, Dckt. 59.

DISCUSSION

Delinquent

Debtor is \$20,642.00 delinquent in plan payments, which represents multiple months of the \$5,959.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on August 22, 2023. 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).

Bad Faith

Trustee argues that this case may be filed in bad faith because the Trustee believes that the Debtor has more income and assets than listed. The Trustee notes that Debtor’s bank statements indicated gambling transactions that have not been listed on Schedule I. Motion, Dckt. 59. Trustee argues that the court should not find that the case was filed in good faith without evidence from Debtor. *See* 11 U.S.C. § 1325(a)(7).

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.