

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**March 4, 2020 at 10:00 a.m.**

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|------------------------------------|--|---|---|
| 1.                                 | <a href="#"><u>20-20344-C-13</u></a><br><a href="#"><u>HSM-1</u></a> | <b>RAYMOND/MARLEN GALLO</b><br><b>Stephan Brown</b> | <b>CONTINUED MOTION FOR RELIEF<br/>FROM AUTOMATIC STAY AND/OR<br/>MOTION TO CONFIRM TERMINATION<br/>OR ABSENCE OF STAY</b><br><b>1-28-20 [11]</b> |
| <b>ALTA SUNRISE DEVCO, LLC VS.</b> |  |   |   |

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor , Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2020. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay 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, Debtor stated Opposition.

<b>The Motion for Relief from the Automatic Stay is granted.</b>
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## REVIEW OF THE MOTION

Alta Sunrise Devco, LLC, as successor in interest (“Movant”), seeks relief from the automatic stay with respect to the real property commonly known as 5450 Sunrise Boulevard, Suite E, Citrus Heights, California (“Property”). The moving party has provided the Declaration of Jacqueline Hoff-Sasser to introduce evidence as a basis for Movant’s contention that Raymond Henry Gallo and Marlen Angela Gallo (“Debtor”) do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property, and Debtor was merely a tenant.

Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento on December 27, 2019. Exhibit E, Dckt. 17.

### Existence of Automatic Stay

The movant argues that no stay exists and seeks confirmation of that fact, relying on In re Windmill Farms, Inc., 841 F.2d 1467, 1471 (9th Cir. 1988). That reliance is misplaced.

In re Windmill Farms, Inc. did not discuss the automatic stay provisions of 11 U.S.C. § 362. That case examined whether there was a lease which could be assumed, and determined there was none. In re Windmill Farms, Inc., 841 F.2d at 1471.

11 U.S.C. § 362(b)(22)(emphasis added) speaks directly to the issue at hand:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(22) subject to subsection (1), under subsection (a)(3), **of the continuation of any eviction, unlawful detainer action, or similar proceeding** by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement **and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession** of such property against the debtor.

Read by its plain meaning, the Bankruptcy Code says there is no stay where judgment for possession was obtained prior to filing. What is not stated is that there is no stay where an unlawful detainer action is merely filed. Movant’s argument that no stay exists would render 11 U.S.C. § 362(b)(22) surplusage.

Here, a judgment was not shown to be obtained prior to filing.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 24, 2020. Dckt. 45. Debtor requests the court deny the motion on the basis that:

- A. Debtor still has the opportunity to cure any default and assume the lease under California and Bankruptcy law.
- B. Under California Code of Civil Procedure §1179, Debtor holds the right to file an application requesting relief from forfeiture of the lease. The hardship requirement should be assumed to be met based on Debtor's bankruptcy filing.
- C. Alternatively, under California Civil Code §3275, this court may grant relief from forfeiture upon "making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty." Debtor notes that there are no facts to suggest the nonpayment of rent were grossly negligent, willful, or fraudulent. The period to cure any default is determined under applicable bankruptcy law.
- D. Under 11 U.S.C. §365(b) and 1322(b)(4) and (5), Debtor has the option to cure or provide adequate assurances that defaults will be promptly cured. Debtor provided an adequate protection payment on February 14, 2020. Movant will be provided with adequate protection through Debtor's Chapter 13 plan with monthly rent payments while curing the default within 36 months. Debtor's Schedules I and J filed on February 24, 2020 demonstrate their ability to make plan payments of \$4,500, as also indicated in its proposed Plan.
- E. The leased property is necessary for a successful reorganization. Debtor uses the property for their business and is one of two sources of income. Thus, Movant's motion should be denied under 11 U.S.C. §362(d)(2).
- F. Debtor concludes that Debtor retains the right to apply California anti-forfeiture statutes to Movant's lease, their Plan proposes to cure the full default amount, and the property is necessary for a successful reorganization.

## CREDITOR'S REPLY

Creditor filed a Reply on February 28, 2020. Dckt. 53. Creditor asserts the following:

- A. When a debtor has been served with a three-day notice, and a debtor fails to pay the rent in response to such notice in conjunction with an unlawful detainer complaint filed, the Ninth circuit has determined the subject lease is terminated. *In re Windmill Farms*, 841 F.2d 1467, 1471 (9th Cir. 1988). Since Debtor failed to pay rent due in the three-day notice by the deadline stated therein, and an unlawful detainer complaint was filed and served upon Debtors, the lease was terminated prepetition.

- B. Under C.C.P. § 1174(c) a court may stay the enforcement of an unlawful detainer judgment based on the nonpayment of rent for five (5) days to permit the tenant to deposit the unpaid rent with the court, provided the notice to pay or quit did not include an election by the landlord to declare the forfeiture of the lease for nonpayment of rent. C.C.P. § 1174 permits a tenant to obtain relief from the forfeiture of a lease for nonpayment of rent if the full amount of the delinquency is paid within the five-day period. No notice must be given to the landlord and no hearing is required. Rather, under the enumerated circumstances, relief from the forfeiture of a lease is granted if the full amount due is paid in the time period prescribed. Here, Debtor is not reliant on C.C.P. § 1174(c) because a judgement for possession had not been entered prepetition and at this time they cannot pay the full amount of the delinquent rent in a lump sum.
- C. C.C.P. § 1179 grants the court discretion to relieve a tenant from the forfeiture of a lease. “So long as the court imposes the statutory conditions, the full payment of rent due or full performance of conditions or covenants so far as practicable, the court has broad discretion to determine the conditions upon which relief will be granted.” *Gill Petroleum, Inc. v. Hayer*, 137 Cal. App. 4th 826, 833 (2006). Further, to obtain relief afforded by C.C.P. § 1179, a tenant must pay the full amount of any delinquent rent at the time forfeiture relief is granted. *Id.* Debtors cannot pay the full amount of the delinquent rent due at this time; therefore, they are not entitled to the relief from the forfeiture of the lease under C.C.P. § 1179.
- D. California Civil Code § 3275 provides that a party may be relieved from forfeiture upon making full compensation to the other party. The statute itself expressly provides that relief from forfeiture may be granted only when the tenant pays the full compensation due to the landlord. Debtor cannot make a full payment to the landlord.
- E. Debtor’s argument rooted in 11 U.S.C. § 365(b) is flawed because this statute is reliant that there is an executory contract or unexpired lease to assume. Pursuant to 11 U.S.C. § 365(c), a trustee may not assume or assign any executory contract or unexpired lease of the debtor if such lease is nonresidential real property and has been terminated. Creditor states, the right to cure found in 11 U.S.C. § 365(b)(1) is dependent on the existence of a lease on the petition date that had not already expired or been terminated. *In re Hospitality Associates, Inc.*, 6 B.R. 778 (D. Or. 1980).
- F. Assuming the Debtor is not prohibited from assuming the lease, they are unable to satisfy the conditions to assume the lease as required by 11 U.S.C. § 365(b) that the trustee will: (A) will promptly cure and (B) promptly compensate. With the Debtor making monthly payments of \$1,589.03, it will take Debtor 39 months to pay the \$62,028.82 in delinquent rent. This payment will not be prompt.
- G. Under 11 U.S.C. § 362(d) stay relief is granted for cause or if the debtor has no equity in the property and the property is not necessary for an effective reorganization. Creditor counters Debtor’s assertion that stay relief is not appropriate since the premises are allegedly necessary for an effective

reorganization by stating: a debtor has no equity in a terminated lease and a terminated lease cannot be considered necessary for an effective reorganization. *In re Physique Forum Gym, Inc.*, 27 B.R. 691, 693 (D. Md. 1982).

## **FEBRUARY 11, 2020 HEARING**

At the hearing, as a condition of the continuance, Debtor shall pay by noon on February 14, 2020, \$7,956.84 to the Chapter 13 Trustee as an adequate protection payment for Movant, which the Trustee shall hold pending demand for disbursement to Movant or further order of the court.

## **DECISION**

First, last and foremost, a relief from stay proceeding is a summary proceeding, not one in which the court adjudicates the underlying rights and obligations of the parties. See, *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)).

What is argued by Debtor is a right under state law to have the lease resurrected from the three day notice and the law as stated by the Ninth Circuit Court of Appeals in Windmills Farms. Movant disputes that Debtor can resurrect the lease and any rights thereunder.

In continuing this Motion for further briefing, the court ordered the Debtor to pay \$7,956.84 to the Trustee to hold as an adequate protection payment for Movant. It is not clear from the record whether the Trustee continues to hold such amount or if it has been disbursed. The \$7,956.84 represents an amount equal to one month of the rent and related expenses. Declaration, ¶ 8, Dckt. 15.

Debtor has filed a Chapter 13 Plan in this case on February 24, 2020. Dckt. 43. That Plan requires a monthly plan payment of \$4,500, to be made for a period of sixty months. No Motion to Confirm has been filed.

On Schedule I, filed on February 26, 2020, Debtor lists having \$15,597 monthly net income from operation of Debtor's business. Dckt. 47 at 37-38. On Schedule J, Debtor states having monthly expenses of (\$11,097.00), which yields the \$4,500 in projected monthly income to fund the plan.

On March 3, 2020, Debtor filed the Business Income and Expenses attachment to Schedule I, showing how the \$15,597.00 in monthly net income is computed.

Missing from Schedule I, Schedule J, and the Business Income and Expenses, is any provision for paying federal and state income taxes, and self-employment taxes on \$187,164 in annual net income from Debtor's business.

Considering the totality of this Motion, the Opposition, and this Chapter 13 case, the correct court to determine whether the lease can be resurrected in the California Superior Court as part of the unlawful detainer proceeding.

The Motion is granted, with the automatic stay modified to allow Movant to proceed in state court to assert its rights and interests to obtain possession of the Property. This is without prejudice to Debtor defending such action and asserting rights of the bankruptcy estate and Debtor to the Property.

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

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

The Motion for Relief From the Automatic Stay filed by Alta Sunrise Devco, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Alta Sunrise Devco, LLC, and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 5450 Sunrise Boulevard, Suite E, Citrus Heights, California ("Property").

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, Michael Kyalwazi ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on February 5, 2020. Dckt. 117. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

Debtor is \$720.00 delinquent in plan payments, which represents multiple months of the \$240.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

3. [15-28301-E-13](#)      **RICHARD/PAULA CUMMINGS**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Mary Ellen Terranella**                      **2-5-20 [99]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtors, Richard and Paula Cummings (“Debtor”), are delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 103. Debtor was scheduled to meet with their counsel but mis-calendared the appointment. Debtor has paid into their plan over \$125,000.00 and are scheduled to complete their plan with the October 2020 payment. Debtor will meet with counsel to decide if they need to file a modified plan to address the delinquency.

**DISCUSSION**

Debtor is \$11,530.00 delinquent in plan payments, which represents multiple months of the

\$2,925.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, thinking about filing a modified plan is not evidence that resolves the Motion.

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

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

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

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

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

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 25, 2019. By the court’s calculation, 26 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.

**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, Jacqueline Elaine Nixon (“Debtor”), is causing unreasonable delay that is prejudicial to creditors, pursuant to 11 U.S.C. § 1307(c).
2. Debtor failed to appear at the First Meeting of Creditor scheduled for September 26, 2019 and the Second Meeting of Creditors scheduled for October 24, 2019.
3. Debtor has not made any plan payments.
4. Debtor failed to provide Trustee with a tax transcript or copy of tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. Debtor also failed to provide pay advises for the 60 days prior to filing.

## **Amended Plan**

Debtor filed a Motion to Confirm an Amended Plan on January 7, 2020. Dckt. 55. The Chapter 13 Trustee, David Cusick (“Trustee”) and Creditor U.S. Bank National Association both filed Oppositions to the Amended Plan. Dckt. 64; 66. The Amended Plan was denied on February 25, 2020, thus the Debtor has yet to confirm a Plan.

## **December 6, 2020 Status Report**

Trustee’s Status Report was filed on December 6, 2019. Dckt. 41.

1. Debtor appeared at the Meeting of Creditors on December 5, 2019 and the meeting has been continued to February 6, 2020. The meeting was continued to allow Debtor time to file all required tax returns.
2. Debtor has not made any payments under the plan. Debtor is \$5,484.21 delinquent.
3. Debtor provided a tax return (2014 federal return) and pay advices.

## **DISCUSSION**

### **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).

Debtor appeared at the continued Meeting of Creditors on February 6, 2020. Trustee’s February 6, 2020 Docket Entry Statement. The Meeting has been concluded as to Debtor.

### **Failure to Provide Tax Returns**

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

Per Trustee’s Status Report, Debtor has provided tax returns and pay advices. Dckt. 41.

### **Delinquent**

Debtor is \$3,212.72 delinquent in plan payments, which represents multiple months of the \$1,606.36 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. The Motion is granted, and the case is dismissed.



## DEBTOR'S RESPONSE

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

Debtor testifies to the following:

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

## DISCUSSION

### Delinquent

Debtor is \$1,316.00 delinquent in plan payments, which represents multiple months of the \$658.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXXXXXXX**

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

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

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

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

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~XXXXXXXXXX~~ .**

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

1. The debtor, Cherri Da Roza ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 80.

1. Debtor fell behind on her Chapter 13 plan payments because Debtor's income from her second job decreased.
2. Debtor has been experiencing health problems and had to incur some unanticipated veterinarian expenses.
3. Debtor has filed a Motion to Incur Debt by refinancing the existing mortgage loan on her Residence. Debtor anticipates having her refinancing completed by the date of the hearing.
4. Debtor's prior Motion to Dismiss was continued to give Debtor time to file a Motion to refinance her current mortgage so that she pay off her Chapter 13 Plan.
5. Debtor filed a Motion to Incur Debtor which is scheduled for a hearing on February 25, 2020.

**DISCUSSION**

Debtor is \$3,948.00 delinquent in plan payments, which represents multiple months of the \$658.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

On February 25, 2020, Debtor’s Motion to Incur was denied without prejudice on the basis that Debtor’s plan to refinance a loan with double the current mortgage rate was not in Debtor’s best interest.

At the March 4, 2020 hearing, ~~XXXXXXXXXX~~

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

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is ~~XXXXXXXXXX~~.~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 30, 2020. 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 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, Jeffery Taggart ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on February 17, 2020. Dckt. 37. Debtor states that he will have a Motion to Modify Plan on file prior to March 4, 2020.

#### **DISCUSSION**

Debtor did not commence making plan payments and is \$800.00 delinquent in plan payments, which represents multiple months of the \$400.00 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.

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

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

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

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

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

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

8. [18-26407-E-13](#)      **NICHOLE MORGAN**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Ronald Holland**                      **2-4-20 [53]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Nicole Morgan (“Debtor”), is delinquent in plan payments.

**DEBTOR’S REPLY**

Debtor filed a Reply on February 25, 2020. Dckt. 57.

1. Debtor has prepared and will be filing a Modified Plan to address the arrears.
2. Debtor has made the payments and has paid an additional \$4,200.00 to Trustee; the actual arrears are in the amount of \$9,903.85.

## **DISCUSSION**

Debtor is \$10,035.90 delinquent in plan payments, which represents multiple months of the \$4,067.95 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes Debtor filed a Modified Plan on February 27, 2020. Dckt. 59. However, no Motion to Confirm Plan has been filed. Unfortunately for Debtor, filing a Plan without setting it for confirmation does not resolve the present Motion.

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

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

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

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

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

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~XXXXX~~.**

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

1. The debtor, Lynette Edwards ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 24, 2020. Dckt. 40.

1. Debtor states she had not been able to make payments due to her receiving breast cancer treatment in Arizona. Further stating that she is on disability and that she lost her job due to her treatment.
2. Debtor asserts her attorney Muoi Chea dismissed herself from Debtor's case. This occurred after Debtor was unable to provide payment. Due to these circumstances, Debtor asks the court to allow her to plead her case at the hearing.
3. Further, Debtor states she is filing a complaint with the Attorney General against her attorney in respect to the discrimination her attorney "put in an email to me."

Debtor included in her response a copy of the email exchanges between Debtor and Counsel. Debtor also included medical documents related to her cancer diagnosis.

#### **COUNSEL'S RESPONSE**

Debtor's Counsel filed a Response to Documents Filed by Debtor on February 25, 2020.

Dckt. 41.

1. Debtor's Counsel asserts Debtor fired her and Debtor expressed her desire to seek another attorney to represent her in this bankruptcy case.
2. Debtor's Counsel also attached an email which explained her impression that she was fired and her rationale on why her Plan could not be modified. Further, Counsel states she believed the Plan could not be modified because of feasibility issues.
3. Counsel has not heard from Debtor since February 10, 2020.

## DISCUSSION

Debtor is \$1,370.00 delinquent in plan payments, which represents multiple months of the \$457.00 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).

It seems that Debtor is arguing in her Opposition she is delinquent in plan payments due to illness related issues, namely traveling to Arizona to obtain cancer treatment.

At the hearing, **XXXXXXXXXX**.

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

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

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

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

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~XXXXX~~.**

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

1. The debtor, Wanda Collier-Abbott ("Debtor"), is delinquent in plan payments.
2. Debtor has not filed and served an amended plan and motion to confirm.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 179. The Opposition references the Declaration filed on February 20, 2020. Dckt. 180. The Declaration states in relevant part:

1. Debtor states after the death of her mother on January 1, 2020, there were significant expenses above and beyond her resources.
2. Debtor's bankruptcy case was filed within days of a foreclosure by the holder of the 1st Deed of Trust. If the case was not filed the holder of the 2nd Deed of Trust would have been shut out in the non-judicial foreclosure.
3. The investor who purchased the note secured by the 2nd Deed of Trust has insisted upon getting paid in full.
4. Debtor would prefer to await the resolution of the Motion to Value as to the 2nd Deed of Trust to help the Debtor determine if she wants to keep the house.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,150.00 delinquent in plan payments, which represents less than one month of the \$2,750.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 28, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Motion to Value Secured Claim of RRA CP Opportunity Trust 2**

On February 25, the court heard the Motion to Value Collateral and Secured Claim of RRA CP Opportunity Trust and continued the hearing to allow for discovery to be conducted and supplemental pleadings filed.

Based on the foregoing, cause exists to dismiss this case. The Motion is **XXXXXXXXXX**.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtors, Daniel and Luisa Fonseca ("Debtor"), are delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 30. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

Debtor is \$3,090.00 delinquent in plan payments, which represents multiple months of the \$1,030.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

12. [16-21719-E-13](#)      **JANEE FARRIS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Pauldeeo Bains**                      **2-5-20 [79]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Janee Farris (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 83.

1. Debtor is delinquent in plan payments due to Debtor losing her prior job. The last day debtor worked at her prior job was July 16, 2019. Recently, Debtor has gained full time employment.
2. Debtor will be filing a modified plan to resolve Trustee’s issues.

## **DISCUSSION**

Debtor is \$2,588.00 delinquent in plan payments, which represents multiple months of the \$722.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 13, 2020. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is 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 Rynda ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to file an amended plan and set it for confirmation.

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

## **DISCUSSION**

Debtor is \$12,937.48 delinquent in plan payments, which represents multiple months of the \$2,470.52 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. The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 30, 2020. 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 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, Carrie Lynn Noah ("Debtor"), is delinquent in plan payments.

#### **DEBTOR'S REPLY**

Debtor filed a Reply on February 19, 2020. Dckt. 33. Debtor states the delinquency will be cured prior to the hearing date. Debtor further asserts that reasonable efforts have been made to fulfill the filing requirements in this case but that work as a teacher and substitute professor was slow during the holidays.

#### **DISCUSSION**

Debtor is \$5,669.84 delinquent in plan payments, which represents multiple months of the \$2,667.46 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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



- B. The Franchise Tax Board has filed an amended claim reducing its amount to zero.
- C. The motion to confirm Debtor's amended plan is being prepared with a planned hearing date of March 31, 2020.
- D. Debtor is current in plan payments, and
- E. Debtor is working on 2019 tax returns and plans to file on or before April 15, 2020.

#### **DECLARATION IN SUPPORT OF DEBTOR'S OPPOSITION**

Debtor filed the declaration of Stephen Gingold in support of the opposition to Trustee's motion to dismiss. Dckt. 54. Debtor asks that the Court deny Trustee's motion to dismiss because of Debtor's progress in prosecuting its case. Debtor has made all plan payments on time, has contacted the IRS to discuss its treatment in the amended plan, has filed an amended plan, has caught up on tax filings, and has paid all fees to the Court.

#### **DEBTOR'S FIRST AMENDED PLAN**

Debtor filed its First Amended Plan on February 19, 2020. Dckt. 52. The Plan provides for six monthly payments of \$3,364.95 and \$3,425.00 monthly payments for the balance of the plan. Unsecured claims are to receive a 0% dividend.

#### **DEBTOR'S OPPOSITION**

Debtor filed the original Opposition on December 24, 2019. Dckt. 45. Debtor states that they have been working on analysis and options to increase funds to ensure an amended plan can be proffered that treats secured creditors and priority creditors as they should be treated pursuant to 11 U.S.C. 1325.

#### **DISCUSSION**

Debtor filed an Amended Plan and Motion to Confirm on February 19, 2020. Dckt. 52. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 56. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

16. [18-24423-E-13](#)      **PAUL ULBRICH**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Scott Shumaker**                      **2-4-20 [40]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Paul Gerard Ulbrich (“Debtor”), filed a plan that exceeds maximum amount of time allowed under 11 U.S.C. § 1322(d).

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 18, 2020. Dckt. 44. Debtor states an intention to file a Modified Plan and to pay a lump sum of \$25,000 prior to the hearing date. Further, Debtor asserts that the plan payments will be increased through contributions from his girlfriend.

**DISCUSSION**

Section 2.03 of the Plan provides that in no event shall monthly payments continue for more than 60 months. According to the Trustee’s calculations, the Plan will complete in 199 months. Debtor

was provided with a Notice of Filed Claims (Dckt. 38) indicating that a motion to modify is required if an allowed claim prevents timely completion of the plan. The filed mortgage arrears claim was \$52,861.47 greater than the Plan estimated and will prevent timely completion of the plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtors, Rudy P. Orpilla and Felicidad A. Orpilla ("Debtor"), failed to file an amended plan.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 69. Debtor states they were out of the country in January and early February 2020 and was unable to sign documents necessary to prosecute an amended plan. Debtor asserts they communicated, through their attorney, Debtor's intention to file an amended plan upon return to the country. Debtor states they will have the amended plan and necessary documents to set the plan for hearing on file prior to the scheduled hearing.

## **DISCUSSION**

### **Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 10, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

18. [17-26035-E-13](#)      **RUSSELL/PATRICIA CARLSEN**      **MOTION TO DISMISS CASE**  
[DPC-5](#)                      **Seth Hanson**                                      **2-4-20 [60]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Russell Thornton Carlsen and Patricia Jean Carlsen (“Debtor”), is delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 64. Debtor states that a payment of

\$2,300.00 was made to the Trustee on February 7, 2020. Debtor plans to cure the delinquency by making two lump sum payments prior to the hearing date. Debtor fell behind on payments due to an unexpected increase in expenses that Debtor does not expect to happen again. Debtor's income has changed from self-employment to becoming a W2 employee.

## **DISCUSSION**

Debtor is \$12,682.76 delinquent in plan payments, which represents multiple months of the \$3,940.46 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 19, 2020. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

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**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, Pete A. Garcia (“Debtor”), is delinquent in plan payments;
2. Debtor failed to file a new plan; and
3. it is unlikely Debtor will file a feasible plan.

**DISCUSSION**

**Delinquent**

Debtor is \$4,450.00 delinquent in plan payments, which represents less than one month of the \$6,400.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **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 Second Amended Plan on February 4, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Feasibility**

Trustee states that based on several plans that have been filed and denied confirmation along with Debtor's payment history, it is unlikely Debtor can propose a feasible plan.

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

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

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

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

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

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

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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 January 17, 2020. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$75.00 due on January 10, 2020.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 13, 2020. By the court’s calculation, 51 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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, Jerline Linda Wallace (“Debtor”), is delinquent in plan payments, and
2. Debtor has failed to file an amended plan.

#### **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on February 27, 2020. Dckt. 84. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 80. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

22. [18-20345-E-13](#) **MATTHEW THOMPSON** **MOTION TO DISMISS CASE**  
[DPC-6](#) **Gabriel Liberman** **2-5-20 [94]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Matthew Blair Thompson (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 98. Debtor states the delinquency will be cured prior to the hearing date and requests Trustee’s Motion to Dismiss be denied.

**DISCUSSION**

Debtor is \$4,321.14 delinquent in plan payments, which represents multiple months of the \$2,049.12 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).



The 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.

24. [19-25945-E-13](#)      **CHARLENE OJASCASTRO**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Richard Jare**                      **2-6-20 [37]**

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 6, 2020. By the court’s calculation, 27 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 -----

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**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, Charlene Joy Ojascastro (“Debtor”), is delinquent in plan payments, and
2. Debtor has failed to file an amended plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,700.00 delinquent in plan payments, which represents multiple months of the \$2,850.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 28, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is ~~XXXXXXXXXX~~.**

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

1. the debtor, Steven Claude Smith (“Debtor”), filed a plan that exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

## DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 6, 2020. Dckt. 96. Debtor argues that the plan will complete within the allotted time once an error related to a creditor’s proof of claim is corrected by creditor.

## DISCUSSION

Debtor is in material default under the Plan because the Plan will complete in 73 months as opposed to the 60 months proposed due to the plan paying 100% to creditors but filed claims were approximately \$15,500.00 greater than scheduled.

According to Debtor, there has been some confusion due to Creditor Carrington Mortgage Services (“Creditor Carrington”). There are two loan modifications attached to the proof of claim. *See* Proof of Claim, 6-2. However, the most recently accepted loan modification for \$67,479.50 (dated 6/26/2018) is the one that controls. Debtor’s Counsel reached out to Creditor on January 20, 2020 and Counsel expects the problem to be resolved prior to the hearing.

As of February 28, 2020, Creditor Carrington has not filed an amended proof of claim, and

Proof of Claim 6-2 for the secured claim in the amount of \$96,517.83 is still there.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is XXXXXXXXXX.**

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

1. the debtor, Cynthia Marie Cushing (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S COUNSEL REPLY**

Debtor’s Counsel filed a Declaration in Reply to the Motion on February 19, 2020. Dckt. 36. Counsel reports that he contacted Debtor on February 18, 2020 and was informed that she had been recently diagnosed with cancer and receiving chemotherapy since December 2019. *Id.* ¶ 1. Counsel testifies that while speaking with Debtor over the phone, Debtor scheduled two payments: one in the amount of \$500.00 for February 19, 2020 and another payment of \$900.00 for February 20., 2020. *Id.* ¶ 2. Counsel believes this will make Debtor current with payments. *Id.*

#### **DISCUSSION**

Debtor is \$920.00 delinquent in plan payments, which represents multiple months of the \$415.00 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).

At the hearing, XXXXXXXXXX.

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

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

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

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

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

**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).**

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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 and Office of the United States Trustee on December 17, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

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

1. the debtor, Linda E. Keilers ("Debtor"), failed to appear at the First Meeting of Creditors.
2. Debtor failed to provide tax returns.
3. Debtor has failed to file an amended plan and set it for confirmation.
4. Debtor may not be entitled to Chapter 13 relief under 11 U.S.C. §109(e).

## DISCUSSION

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable

delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

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 November 5, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is over the secured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,257,850 may be a debtor under Chapter 13. Here, Debtor owes \$1,366,578.10 in secured debt.

### **Continuance of Hearing**

Debtor's spouse appeared at the hearing. He reports that his wife, the Debtor, is disabled and unable to attend the hearings. Further, that he and the Trustee are making arrangements for the Debtor to have a first meeting of creditors by phone.

In substance, Debtor's spouse appears to be attempting to provide legal services for the Debtor, appearing at hearings, proposing the plan, and prosecuting the case in her place. He has not been appointed as the personal representative for Debtor (Fed. R. Bankr. P. 25, Fed. R. Bankr. P. 1016).

The court addressed with Debtor's spouse the need for Debtor to obtain counsel.

The Trustee agreed to continuance of the hearing to afford Debtor and her spouse the opportunity to obtain counsel.

### **March 4, 2020 Hearing**

Nothing further has been filed by the Debtor since the prior hearing. No attorney has substituted into this case to represent this Debtor.

Cause exists to grant the Motion and Dismiss the case. The Motion is granted

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

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

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

**IT IS ORDERED** that the Motion is granted and this bankruptcy case is dismissed.

28. [19-21951-E-13](#)      **JASMINE SMITH**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Scott Shumaker**                      **1-30-20 [70]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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 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, Jasmine Rae Smith (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 74. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtor is \$784.00 delinquent in plan payments, which represents multiple months of the \$392.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

29.	<a href="#"><u>18-26358</u></a> -E-13 <a href="#"><u>DPC-3</u></a>	TANESHIA WRAY Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 12-11-19 <a href="#"><u>91</u></a>
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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Taneshia Wray (“Debtor”), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 20, 2019. Dckt. 95. Debtor states she will file, set, serve, and be current under a modified Chapter 13 plan before the hearing on this motion.

## **DISCUSSION**

Debtor is \$9,700.00 delinquent in plan payments, which represents multiple months of the \$1,950.00 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).

As of February 28, 2020, Debtor has failed to file such a modified plan and the motion in support of confirmation.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Cynthia Leeann Ross ("Debtor"), has failed to file, serve, and set for hearing a motion to confirm the plan filed on December 12, 2019.
2. Debtor failed to send the Plan to the Trustee.
3. The Notice of Chapter 13 Bankruptcy Case did not include the date of which the objection to confirmation was due and the hearing date of the Confirmation Hearing.
4. The December 12 Plan does not account for the proof of claim filed by One Main Financial on January 7, 2020.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 11, 2020. Dckt. 19. Debtor states that she will file a First Amended Plan, include Creditor One Main Financial's claim., and set it for a Confirmation hearing.

#### **DISCUSSION**

Debtor failed to file a Motion to Confirm a Plan after filing a plan on December 12, 2020. Indeed as to Debtor's assertion that she will file a First Amended Plan, a review of the docket shows that

Debtor has not yet filed such a plan or a motion to confirm. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Douglas Matthew Lutes and Valerie Lyn Lutes (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 18, 2020. Dckt. 117. Debtor states that a Modified Plan will be filed and set for hearing prior to this matter.

#### **DISCUSSION**

Debtor is \$13,020.00 delinquent in plan payments, which represents multiple months of the \$4,340.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 6, 2019. By the court's calculation, 75 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, David Kelly Manning("Debtor"), is \$4,000.00 delinquent in plan payments.
2. Debtor's proposed plan was denied on July 16, 2019 and has failed to propose an amended plan.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 6, 2019. Dckt. 81. Debtor states the delinquency will be cured and an amended plan filed prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$4,000.00 delinquent in plan payments, which represents multiple months of the \$2,000.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 16, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

In light of the pending loan modification, the Trustee concurred in continuing the matter to allow Debtor to promptly file a modified plan and motion to confirm.

The court continued the hearing from November 20, 2019 to March 4, 2020.

## **MARCH 4, 2020 HEARING**

A review of the file discloses that nothing, other than a Notice of Claims Filed, has been filed in this case since the court's Civil Minutes from the November 20, 2019 hearing.

The defaults have not been addressed (at least as would be reflected in the record in this case), no amended plan has been filed, and it is unclear what Debtor is doing to prosecute this case in good faith.

Cause exists to dismiss the case. The Motion is granted.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted and this Chapter 13 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Cynthia J. Paysinger ("Debtor"), is delinquent \$6,990.00 in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 140. Debtor states a modified Chapter 13 Plan will be filed, set, served, and be current with that plan.

#### **DISCUSSION**

Debtor is \$6,990.00 delinquent in plan payments, which represents multiple months of the \$2,830.00 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).

#### **Amended Plan and Motion to Confirm**

On February 28, 2020, Debtor filed a Third Modified Plan. Dckt. 147. The proposed Plan provides for total payments of \$30,676.24 through February 2020 to be made by the Debtor, the first twenty months of the plan, and then \$3,000.00 a month for forty months.

The Motion to Confirm (Dckt. 143) states with particularity an emergency and medical treatment relating to a "client" of the Debtor that disrupted the prior plan.

In her Declaration, Debtor provides the same statement of a “client” having an emergency and the client getting “chemo,” but does not testify as to how this impacted her ability to perform the confirmed plan in this case and how Debtor’s finances have changed going forward. Dckt. 145.

Debtor also provides her “legal opinion” that her plan complies with the Bankruptcy Code.

Debtor’s declaration is devoid of any economic explanation of the default and how, going forward, Debtor will be able to make \$3,000 a month payments. Under the prior confirmed Second Modified Plan (Dckt. 122), Debtor was required to make monthly payments of only \$2,830.00.

Debtor has not provided the court with updated income information, but has filed a Supplemental Schedule J. Dckt. 149. On Supplemental Schedule J Debtor lists having monthly income of \$4,867.69. Then Debtor states that she has (\$1,967.69) a month in expenses *Id.* That leave her only \$2,900.00 a month in stated monthly net income, short of the \$3,000.00 a month the proposed plan would require her to pay. Debtor does have a “backup for emergencies” (\$223.00) a month of expenses.

In the prior most recent Amended/Supplemental Schedule I, Dckt. 126 filed on August 16, 2019, Debtor listed income of:

Wages.....	\$868.83
Taxes/Medicare/SS.....	(\$ 69.14)
Social Security.....	\$1,520.00
Food Stamps.....	\$ 140.00
Son Contribution.....	\$1,230.00
Second Job.....	\$ 778.00 (\$900 pre-tax)
IHSS - Second Client.....	\$ 400.00 (\$600 pre-tax)
Total Monthly Income.....	\$4,867.69

On Schedule A/B and D Debtor lists the property that she is trying to save in this bankruptcy case as having a value of \$290,000. Dckt. 19. As of the time of filing the Schedules in 2018, Debtor listed there being (\$310,000) of debt encumbering the property. Proof of Claim No. 1 filed for the secured claim states that the amount of the claim was (\$322,948.38).

In the proposed Third Modified Plan, in addition to the (\$36,954.42) pre-petition arrearage, Debtor now has an additional (\$9,376.59) post-petition arrearage, which appears to be significantly interest, increasing the debt against the property. Thus, it appears questionable about why the Debtor, who has no ability to pay this obligation without a \$50,000 contribution from her son over the life of the proposed plan, would be struggling to keep this significantly underwater valued property.

At the hearing, counsel for Debtor directed the court to evidence in the record, explaining

**XXXXXXXXXX**

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



sanctions are issued pursuant thereto, and the case is dismissed.

35. [19-27664-E-13](#)      ANTHONY HEMENES      MOTION TO DISMISS CASE  
[DPC-1](#)                      Pro Se                                      2-4-20 [24]

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Anthony Hemenes, III (“Debtor”), failed to appear at the Meeting of Creditors.
2. Debtor is delinquent in plan payments.
3. Debtor failed to provide business documents.

**DISCUSSION**

**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).

**Delinquent**

Debtor is \$1,000.00 delinquent in plan payments, which represents one month of the

\$1,000.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to File Documents Related to Business**

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

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

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Charlie Boggs and Christina Boggs (“Debtor”), are delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on February 4, 2020. Dckt. 38. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

Debtor is \$1,300.00 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

hearing.

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

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

37. [19-24768-E-13](#) **LARRY BELLANI** **CONTINUED MOTION TO DISMISS**  
[DPC-3](#) **Michele Poeracke** **CASE**  
**12-6-19 [46]**

**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 December 6, 2019. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is XXXXXXXX.**

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

1. the debtor, Larry J. Bellani (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S SECOND OPPOSITION**

On February 19, 2020, Debtor filed a second Opposition. Dckt. 68. Debtor also filed a Declaration in support of the Opposition. Dckt. 69. Debtor believes he will be able to confirm and pay in full the Second Amended Plan filed on February 19, 2020.

Debtor has also filed a Motion to Employ listing agents in order to list his residence for sale, which is an integral part of the proposed Plan. *See* Dckt. 71. In his Declaration, Debtor apologizes to the court for delaying the sale of his residence and of proposing an amended plan. Declaration, at 2. There was another illness, death, and funeral in his family that delayed Debtor in prosecuting this case. *Id.*

When Debtor returned to Vacaville, Debtor contacted his counsel. *Id.* Now that he is back, Debtor has selected a realtor and an application for employment has been filed. *Id.* at 3. The Second Amended Plan and a motion in support have been filed. *Id.* at 4. Debtor contends that based on the recalculation of likely sale proceeds from the sale of his residence, Debtor has also filed a motion to avoid the judgment lien by creditor American Express. *Id.* at 5. Debtor asserts that as of January 2020, he is current with plan payments. *Id.* at 6. Debtor requests the court not to dismiss the case so that the proposed Plan be reviewed and hopefully confirmed and so that he can move forward with selling his residence and paying off the chapter 13 plan. *Id.* at 7.

## **DEBTOR'S ORIGINAL OPPOSITION**

Debtor filed an Opposition on December 24, 2019. Dckt. 50. Debtor states the delinquency will be cured prior to the hearing date. Nothing more is offered in the Opposition.

Debtor's Declaration filed with the Opposition includes some additional information. Dckt. 51. Debtor testifies that he is self-employed, but has failed to keep up his personal and business obligations due to some personal and family issues, including the death of a parent, which led to the filing of the bankruptcy case. While stating events that led to the filing, these events do not explain the post-petition defaults.

## **DISCUSSION**

Debtor then explains that the income from his business has been spotty and inconsistent, but now Debtor thinks it is increasing. Additionally, he intends to convert his Chevron pension to an IRA, and then use the IRA monies to fund his expenses, and presumably plan payments.

Debtor explains his extraordinary efforts, including "raiding" his retirement to try and pay his expenses, stating that he has brought in a boarder in his house, but that has not been sufficient. Now he is "cleaning up" his house and intends to sell it to recover his exempt equity (which is not an improper effort) and possibly generate some money for creditors.

The Trustee has filed an Opposition to Debtor's Motion to Confirm. Opposition, Dckt. 58. That Opposition and a review of Debtor's Amended Plan, Dckt. 38, shows that the Plan merely states that Debtor will sell the house at some, non-specific, future date. The arrearage on the claims secured by the home are stated by Debtor to be more than (\$56,000).

In opposing the Motion to Dismiss, Debtor states that repairs have to be made to the house for it to be sold. These are not explained nor how they will be funded.

Debtor has filed an Amended Schedule I (which corrects errors and states Debtor's correct income dating all the way back to the filing of this case) states that Debtor has income of \$4,556 from his business. Dckt. 37. Debtor then shows an additional \$750 for rent. This give Debtor gross income (before income and self -employment taxes) of \$5,306.50.

Debtor has filed an Amended Schedule J stating his expenses to be only (\$1,950), leaving him \$3,356.50 to fund the Plan. *Id.* Missing from Debtor's expenses are his State Income Tax, State Disability Tax, Federal Income Tax, and Federal Self-Employment Tax. The court cannot identify any basis that Debtor is exempt from paying these taxes, including taxes for taking distributions from his IRA.

On Schedule Debtor lists his home as having a value of \$425,000. Dckt 1 at 10. On Schedule D, Debtor lists (\$324,070) in claims secured by his home. *Id.* at 20-21. Debtor states that repairs will have to be made, though the amounts of such repairs are not stated.

This is not Debtor's first recent case. Debtor, represented by the same counsel as in this case, filed a Chapter 13 case on February 25, 2019. 19-21107. In that case, the Chapter 13 Trustee objected to Debtor claiming \$133,802.30 as his homestead exemption. 19-21107; Civil Minutes, Dckt. 42. The Debtor being less than 65 years of age, being single, and having no dependents, the maximum homestead exemption Debtor could claim was "only" \$75,000. *Id.* It is difficult to divine what good faith basis Debtor and his counsel could have for stating a homestead exemption almost 100% higher than the amount allowed by law. Debtor offered no opposition, response, or explanation for the gross overstatement of the exemption when the Objection was filed by the Trustee.

Debtor is \$4,091.84 delinquent in plan payments, which represents multiple months of the \$3,356.50 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).

Additionally, Debtor demonstrates that the Plan is not feasible, not providing for the payment of one-cent of taxes from the substantial self-employment income, modest monthly rent, and withdrawals from his IRA (having converted his Chevron pension to an IRA).

Debtor testifies under penalty of perjury that he is now current with his plan payments. A look at the docket shows that Debtor filed a Motion to Employ a realtor which was granted on February 25, 2029. Dckt. 78.

The docket also reflects that Debtor has indeed filed Second Amended Chapter 13 Plan and a Motion to Confirm. Dckt. 67, 74. Debtor's proposed Plan provides for monthly plan payments of \$3,365.00 for 36 months with a 50% dividend for unsecured claims totaling \$22,233.00. Beginning with the month in which escrow closes from the sale of the family residence, the ongoing plan payment will be reduced by \$2,650.00 per month, down to \$706.00 per month through the balance of the 36 month term of the plan.

According to Debtor's Declaration in support of the Motion to Confirm the Plan, Dckt. 76, assuming the house is sold for the listing price of \$440,000.00, the sale of the residence will allow Debtor to pay Creditor Fidelity Bank and ABS REO Trust V, and with potential additional proceeds to pay the American Express lien and additional exempt funds to Debtor.

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

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

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

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

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

38. [19-27575-E-13](#) **TANISHA JACKSON-VITAL** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Eric Schwab** **2-5-20 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Tanisha Marque Jackson-Vital (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a Motion to Confirm the Amended Plan and set it confirmation.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 30. Debtor states that an Amended Chapter 13 Plan and Motion to Confirm will be filed on or before the hearing date.

**DISCUSSION**

**Delinquent**

Debtor is \$3,260.00 delinquent in plan payments, which represents one month of the \$3,260.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Delay of Confirmation**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's issuing of a Notice of Incomplete Filing to Debtor's prior plan on December 9, 2019. A review of the docket shows that Debtor filed a Chapter 13 Plan on January 7, 2020 has not yet filed a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

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

#### **DEBTOR'S AUGUST 7, 2019 OPPOSITION**

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

#### **DEBTOR'S NOVEMBER 12, 2019 OPPOSITION**

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

#### **DISCUSSION**

Debtor is \$2,700.00 delinquent in plan payments, which represents multiple months of the \$900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee concurred with the Debtor's request for a continuance in light of the plan being

near completion and Debtor having new employment by which funding of the plan should be possible.

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

Unfortunately, cause exists to grant the motion and dismiss this case.

The Motion is granted.

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 this Chapter 13 Case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and this Chapter 13 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, David Garfield Evans ("Debtor"), has failed to file an Amended Plan.

#### **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on February 11, 2019. Dckt. 60. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 70. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

appearing,

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

41. [18-23788-E-13](#)      **KARLA LOWE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mikalah Liviakis**                      **2-4-20 [23]**

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Karla Kehaulani Lowe (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 19, 2020. Dckt. 27. Debtor states that Debtor fell behind on payments and will be filing a modified plan to become current.

**DISCUSSION**

Debtor is \$1,375.00 delinquent in plan payments, which represents multiple months of the \$395.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

**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).**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 6, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**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, Tema Robinson ("Debtor"), is \$2,072.14 delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,072.14 delinquent in plan payments, which represents one month of the current plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee concurred in the request for a continuance in light of Debtor's stated steps for prosecution of confirmation of a plan in this case.

On February 25, 2020, Debtor's Motion to Confirm was heard and the Motion was denied.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 4, 2020. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~XXXXXXXXXX~~.**

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

1. the debtor, Jeffery W. Roberson ("Debtor"), is delinquent in plan payments.
2. A Notice of Death was filed but no motion for omnibus relief has been filed.

## DISCUSSION

### Delinquent

Debtor is \$704.00 delinquent in plan payments, which represents multiple months of the \$350.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Death Certificate Filed

On January 16, 2020 Debtor's Counsel filed a Notice of Death for Debtor. Dckt. 41. Counsel filed Exhibit A in support of the Notice. The exhibit is a copy of the redacted County of Solano Health and Social Services Department Certificate of Death. Per the Certificate, Debtor passed away on November 30, 2019. Dckt. 42.

The survivors or successor to the rights and interests of the Debtor have not sought a determination by the court pursuant to Federal Rule of Bankruptcy Procedure 1016 that this case can continue with a personal representative appointed.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

# FINAL RULINGS

44. [18-23304-E-13](#) MELANIE LEE CONTINUED MOTION TO DISMISS  
[DPC-1](#) Rick Morin CASE  
12-9-19 [23]

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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**The Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David P. Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 26, 2020, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Melanie Frances Lee (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David P. 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. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss the Chapter 13 Case is dismissed without prejudice.

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 24, 2020, Dckt. 32; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Michael Risse and Kelly Ann Risse (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 32, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

46. [19-24205-E-13](#) MARGO SCOTT MOTION TO DISMISS CASE  
[DPC-1](#) Candace Brooks 1-30-20 [19]

**Final Ruling: No appearance at the March 4, 2020 hearing is required.**  
-----

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

47. [17-27906-E-13](#) PAMELA SPRING MOTION TO DISMISS CASE  
[DPC-3](#) Mohammad Mokarram 2-5-20 [62]

**Final Ruling: No appearance at the March 4, 2020 hearing is required.**  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 19, 2020, Dckt. 68; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Pamela Gaynell Spring (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 68, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 8, 2020. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case:\$77.00 due on January 2, 2020.

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

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 26, 2020, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Sally Kay Brown (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Virginia Payton (“Debtor”), is delinquent in plan payments. Trustee asserted Debtor is \$6,653.96 delinquent in plan payments, which represents multiple months of the \$2,294.78 plan payment.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 19, 2020. Dckt. 70.

1. Debtor has made a payment of \$2,326.94 after Trustee filed his Motion to Dismiss and Debtor will make her February payment of \$2,294.78 prior to the hearing.
2. Debtor states she has filed a Modified Plan and Motion to Approve the Modified Plan.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 19, 2020. Dckt. 64. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 62. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 15, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Hector Arnaldo Cavazos (“Debtor”), is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6).
2. Debtor is \$8,865.36 delinquent in plan payments, which represents multiple months of the \$4,116.34 plan payment.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on November 6, 2019. Dckt. 85. Debtor states the delinquency will be cured prior to the hearing date.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on January 22, 2020. Dckt. 92. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 90. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

hearing.

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**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, Damion Hribik (“Debtor”), is delinquent in plan payments.
2. Debtor has not filed an amended plan or Motion to Confirm after their pervious plan was denied.

## DISCUSSION

### Delinquent

Debtor is \$88.20 delinquent in plan payments, which represents less than one month of the \$2,722.05 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Prior Plan Denied, No New Plan

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

has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Edward Pettyplace (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S REPLY**

Debtor filed a Reply on February 19, 2020. Dckt. 59.

1. Debtor states he fell behind on Plan payments when his wife fell ill. Debtor’s source of income comes from driving Lyft. When his wife got sick he could not work because he had to care for his wife.
2. Debtor’s income has now stabilized and he is able to resume making payments.
3. Debtor filed a Motion to Confirm his Modified Plan at the same time as his Reply.

#### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 19, 2020. Dckt. 56. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 53. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Thomas Elliot Shumate and Shannon Elizabeth (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$795.00 delinquent in plan payments, which represents multiple months of the \$415.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

55. [19-24924-E-13](#)      **PATRICIA SHERRON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Gary Fraley**                      **1-30-20 [50]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). 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, Patricia Ann Sherron (“Debtor”), is delinquent in plan payments.

**DISCUSSION**

Debtor is \$4,329.18 delinquent in plan payments, which represents multiple months of the \$2,123.06 plan payment. Before the hearing, another plan payment will be due. Failure to make plan





**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**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, Shauna Lynn Roberts (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$20,560.00 delinquent in plan payments, which represents multiple months of the \$5,970.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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



**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). 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, Lindsay Martine Cannaday (“Debtor”), is delinquent in plan payments.

#### DISCUSSION

Debtor is \$26,773.07 delinquent in plan payments, which represents multiple months of the \$6,693.38 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

61. [19-22842-E-13](#)      **DEBRA CAMPBELL**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mary Ellen Terranella**      **1-30-20 [17]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Debra Campbell (“Debtor”), is \$996.00 delinquent in plan payments, which represents multiple months of the \$332.00 plan payment.

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 19, 2020. Dckt. 23. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 23. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

hearing.

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

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

62. [19-25742-E-13](#)      **ORLANDO CISNEROS**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Richard Jare**                      **1-13-20 [82]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 13, 2020. By the court’s calculation, 51 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is 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, Orlando Cisneros (“Debtor”), is delinquent in plan payments, and
2. Debtor has failed to file an amended plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,850.00 delinquent in plan payments, which represents one month of the \$3,850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **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 November 26, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 12, 2020. By the court’s calculation, 21 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Andre Michael Huddleston, Sr.’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on February 26, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 46. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on February 26, 2020. *McFadden*, 37 B.R. at 521.

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

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

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

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

64. [18-27149-E-13](#) **YVONNE ESCOBAR** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Richard Sturdevant** **2-4-20 [56]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**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, Yvonne Vancini Escobar (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,202.96 delinquent in plan payments, which represents multiple months of the \$2,783.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

is dismissed.

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

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

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

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

65. [19-25549-E-13](#)      **KENDRA HOPKINS**      **ORDER TO SHOW CAUSE - FAILURE**  
47 thru 48      Pro Se      **TO PAY FEES**  
1-6-20 [[40](#)]

**DEBTOR DISMISSED: 1/16/20**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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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 January 8, 2020. The court computes that 56 days’ notice has been provided.

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

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on January 16, 2020 (Dckt. 50), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

**DEBTOR DISMISSED: 1/16/20**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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The case having previously been dismissed, 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 the Chapter 13 Case 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 March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. the debtors, J Armando Espino Fraire and Enriqueta Espino Gonzalez (“Debtor”), are delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,906.88 delinquent in plan payments, which represents multiple months of the \$2,171.72 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

68. [15-21852-E-13](#)      **SUZAN MORGAN**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Dale Orthner**                      **2-4-20 [24]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**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, Suzan Lois Morgan (“Debtor”), is delinquent in plan payments

## **DISCUSSION**

Debtor is \$420.00 delinquent in plan payments, which represents multiple months of the \$105.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 4, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

**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, Ricardo J Cortez (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$5,118.54 delinquent in plan payments, which represents multiple months of the \$2,110.96 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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



**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Barry Keith Taylor and Cindy Marie Taylor (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$6,251.83 delinquent in plan payments, which represents multiple months of the \$2,182.67 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

72. [19-23962-E-13](#)      **ANGELIQUE HOELCK**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Bruce Dwiggin**                      **2-5-20 [34]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Angelique Cynthia Hoelck (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$3,381.10 delinquent in plan payments, which represents multiple months of the

\$1,316.82 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 20 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Kenneth R. Bonnafon and Norma Salinas-Bonnafon (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtors are \$3,825.07 delinquent in plan payments, which represents multiple months of the \$965.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

hearing.

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

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

74. [19-25363-E-13](#)      **SHOSHANA BOEK**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Nikki Farris**                      **2-5-20 [46]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 20 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, Shoshana Christina Boek (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an Amended Plan and set it for confirmation.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,648.85 delinquent in plan payments, which represents multiple months of the \$5,767.14 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).

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 14, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Barbara Christine Graves (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,810.49 delinquent in plan payments, which represents multiple months of the \$1,312.70 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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



**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, George Douglas Young and Louise Marie Young (“Debtor”), is delinquent in plan payments.
2. Debtor failed to file an Amended Plan and set it for confirmation.

## DISCUSSION

### Delinquent

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

### No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of

confirmation to Debtor's prior plan on December 17, 2019. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

78. [18-24070-E-13](#)      **LAWANNA PARKER**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mickalah Liviakis**                      **2-4-20 [26]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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**The Motion to Dismiss the Chapter 13 Case is dismissed without prejudice, and this Bankruptcy Case shall proceed in this court.**

David P. Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Motion on February 26, 2020, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Lawanna Gean Parker ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David P. Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13



**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). 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, Nguyet N. Pham (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$240.00 delinquent in plan payments, which represents multiple months of the \$120.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

81. [17-27077-E-13](#)      **MICHAEL SCALLIN**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Peter Cianchetta**                      **2-5-20 [113]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Michael Everett Scallin (“Debtor”), is delinquent in plan payments.

**DISCUSSION**

Debtor is \$3,351.00 delinquent in plan payments, which represents multiple months of the \$844.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan



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

83. [19-25877-E-13](#)

**SHANITA JEFFERSON**  
**Thomas Amberg**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**1-22-20 [36]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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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 January 24, 2020. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$70.00 due on January 17, 2020.

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

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Norman Willie Velasquez and Luana Marie Velasquez (“Debtor”), is delinquent in plan payments.
2. Debtor has not served the Amended Plan or filed a Motion to Confirmation.

## **DISCUSSION**

### **Delinquent**

Debtor is \$11,235.60 delinquent in plan payments, which represents multiple months of the \$2,808.90 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Delay of Confirmation**

Debtor has yet to file a Motion to Confirm a Plan after filing an Amended Plan on December 11, 2019. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). 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, Charlene Lynette Jones (“Debtor”), is delinquent in plan payments.

#### **DISCUSSION**

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

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

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

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

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

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

86. [19-20886-E-13](#)      **MICHAEL/MELISSA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **O'CONNELL**                      **1-30-20 [24]**  
   **Matthew Gilbert**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 30, 2020. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. the debtors, Michael James O’Connell and Melissa Lea O’Connell (“Debtor”), is delinquent in plan payments.

**DISCUSSION**

Debtor is \$5,190.00 delinquent in plan payments, which represents multiple months of the \$2,130.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

87. [18-26291-E-13](#)      **VIRGINIA MONTOYA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Nicholas Wajda**                      **2-4-20 [18]**

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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**The Motion to Dismiss the Chapter 13 Case is dismissed without prejudice.**

David P. Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on February 24, 2020, Dckt. 25; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Virginia Anne Montoya (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Plan filed by David P. 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, Dekt. 25, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Dismiss the Chapter 13 Case is dismissed without prejudice.

88. [19-27691](#)-E-13

**DANIEL CERVANTES**  
**Peter Macluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
1-21-20 [16]

**Final Ruling:** No appearance at the March 4, 2020 hearing is required.

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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 January 23, 2020. 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: \$79.00 due on January 15, 2020.

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

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

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

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

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

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

**Final Ruling: No appearance at the March 4, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 29, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

**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, Rhiannon Winnoma Nichols (“Debtor”), is delinquent in plan payments.
2. Debtor failed to appear at the Meeting of Creditors.

#### **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on January 20, 2020. Dckt. 51. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 47. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

appearing,

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