

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

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

**May 29, 2019 at 10:00 a.m.**

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1.    [15-20204-E-13](#)    **TIMOTHY/JENNIFER VINCENT**    **MOTION TO DISMISS CASE**  
      [DPC-7](#)                    **Justin Kuney**                                    **4-26-19 [83]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Timothy Lee Vincent and Jennifer Lee Vincent (“Debtor”), are \$5,804.27 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 15, 2019. Dckt. 87. Debtor’s counsel states he has not had a chance to discuss the Motion with Debtor, and that Debtor will present evidence at the hearing on the Motion that the delinquency is cured.

## **DISCUSSION**

Debtor is \$5,804.27 delinquent in plan payments, which represents multiple months of the \$2,917.61 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.

2. [17-23305-E-13](#)      **CHERRI DA ROZA**  
[DPC-1](#)                      **Candace Brooks**

**MOTION TO DISMISS CASE**  
**4-26-19 [30]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Cheri Mae Da Roza (“Debtor”), is \$1,316.00 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 14, 2019. Dckt. 34. Debtor explains several unexpected expenses caused her to fall delinquent, including the passing of her father and medical bills for her father’s dog which she inherited. Debtor states she will file a modified plan prior to the hearing date.

**DISCUSSION**

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).

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

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

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

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

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

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

3.     [17-27908-E-13](#)     **LYNETTE EDWARDS**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)            **Muoi Chea**                    **4-29-19 [28]**

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Lynette Shena Edwards (“Debtor”), is \$915.00 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 9, 2019. Dckt. 32. Debtor states the delinquency will be

cured prior to the hearing date.

## **DISCUSSION**

Debtor is \$915.00 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).

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.

4. [17-20713-E-13](#)      **PAUL VIGIL**  
[DPC-1](#)                      **Michael O’Dowd**

**MOTION TO DISMISS CASE**  
**5-1-19 [29]**

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

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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 May 1, 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 the debtor, Paul Margarito Vigil (“Debtor”), is \$980.00 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 10, 2019. Dckt. 33. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

Debtor is \$980.00 delinquent in plan payments, which represents multiple months of the \$490.00 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.

5. [16-25115-E-13](#)      **ANTHONY BORTKO**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Candace Brooks**                      **4-29-19 [55]**

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Anthony E. Bortko (“Debtor”), is \$4,526.00 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 14, 2019. Dckt. 59. Debtor states he fell behind in payments after engaging in gambling, but will be able to cure the delinquency by the time of the hearing.

**DISCUSSION**

Debtor is \$4,526.00 delinquent in plan payments, which represents multiple months of the \$2,263.00 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. Furthermore, the court has concerns where Debtor is gambling money away, falling delinquent on the Confirmed Plan Payments which purport to commit all of Debtor's disposable income, and then can somehow come up with extra funds to cure delinquency.

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 May 1, 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 the debtor, Maureen Sonja Cline (“Debtor”), is \$3,238.52 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed the Declaration of Scott Hughes in Response to the Motion on May 15, 2019. Dckt. 88. Debtor’s counsel Mr. Hughes testifies that Debtor has not contacted him regarding the Trustee’s Motion, but requests the court allow Debtor until the time of the hearing to cure the delinquency.

#### **DISCUSSION**

##### **Failure to Comply with Local Rules**

Debtor’s counsel filed a Declaration as a Response, providing the testimony of Debtor’s counsel but also making a request for relief that the Trustee’s Motion be denied. That is not the practice in the Bankruptcy Court. “Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

## **Delinquency in Plan Payments**

Debtor is \$3,238.52 delinquent in plan payments, which represents multiple months of the \$1,625.26 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.

7. [17-25320-E-13](#)      **DAVID/KIMBERLY TREXLER**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Eric Schwab**                      **5-1-19 [78]**

**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 May 1, 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 the debtors, David Alvin Trexler and Kimberly Marie Trexler (“Debtor”), are \$5,085.60 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 14, 2019. Dckt. 82. Debtor states a modified plan will be filed prior to the hearing.

**DISCUSSION**

Debtor is \$5,085.60 delinquent in plan payments, which represents multiple months of the \$2,562.80 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.

8. [17-24621-E-13](#)      **THOMAS/PAULA DITTY**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mohammad Mokarram**                      **4-26-19 [35]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Thomas Lee Ditty and Paula Faye Ditty (“Debtor”), are delinquent \$1,950.00 in plan payments.

**DEBTOR’S REPLY**

Debtor filed a Reply on May 13, 2019. Dckt. 39. Debtor states Debtor made a payment of \$980.00 on May 10, 2019 and will make another payment on the hearing date. Declaration ¶ 3, Dckt. 41.

## **DISCUSSION**

Debtor is \$1,960.00 delinquent in plan payments, which represents multiple months of the \$980.00 plan payment.

Debtor states a \$980.00 payment has been made and another will be made at the hearing. However, before the hearing, another plan payment will be due. To become current at the hearing date Debtor would have had to pay \$2,940.00 after Trustee's Motion was filed. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, 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.

9. [18-24928-E-13](#)      **MARVIN/GINA DOMINGUEZ**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Mark Wolff**                      **4-9-19 [29]**

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

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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 April 9, 2019. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Marvin Antonio Dominguez and Gina Marie Dominguez (“Debtor”), are \$5,485.01 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition to the Motion on May 14, 2019. Dckt. 33. Debtor’s counsel states the current delinquency was cured, and Debtor will make the upcoming payment by the hearing date. Debtor’s counsel explains no declaration could be filed because Debtor was hospitalized.

**DISCUSSION**

Debtor is \$5,485.01 delinquent in plan payments, which represents multiple months of the \$2,753.67 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).

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.

10. [17-22333-E-13](#) THOMAS WARREN  
[DPC-2](#) Lucas Garcia

CONTINUED MOTION TO DISMISS  
CASE  
9-10-18 [40]

**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 September 10, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Thomas Warren ("Debtor") is \$671.00 delinquent in plan payments, which represents slightly more than one month of the \$650.00 plan payment. Before the hearing, another plan payment will have become due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues further that Debtor is in material default under the Plan. Approximately \$14,185.00 remains to be paid under the confirmed plan (excluding future monthly contract installment amounts), which would require 70 months of the \$205.00 payment (net of Trustee fees and monthly contract installments). Debtor will complete the Plan in 86 months, not the 60 months proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to resolve these issues puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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

Debtor filed an Opposition to Trustee's Motion on September 26, 2018. Dckt. 44. In Debtor's Opposition, Debtor's counsel asserts:

1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.



2. The debtors live-in Roommate who contributes all of her income to the household (her name is Lori Childe), lost her IHSS income in June and was unable to gain more income (from Disability) until early September.

a. Due to recuperating income payments sufficient to catch up will be submitted on or before this hearing.

3. Finally, the trustee raises the fact that their calculations project an over extension of the plan time frame. This calculation has not been confirmed by counsel and will also take reviewing of all claims in further detail to ensure that no objections to claim or portion of claim needs to be filed.

Debtor requests the court deny this motion if Debtor becomes current, and allow for at least three weeks for a modified Chapter 13 Plan.

Debtor's Opposition is supported by the Declaration of Lori Childe, Debtor's roommate. Dckt. 45. Childe states she lost her IHSS income for service rendered to Debtor, but has since been approved for disability. Childe states further that a payment, using her disability and Debtor's social security income) will be made on or about October 6, 2018, which will be sufficient to cure all arrears that will have accrued by that time.

#### **OCTOBER 10, 2018 HEARING**

At the October 10, 2018, hearing Debtor's counsel reported that disagreement had broken out between Debtor and Ms. Childe, that her status as caregiver had been terminated, that she had not been paying rent, and that Debtor's sister (Susan Rose) had obtained counsel and was asserting that she now held the power of attorney for Debtor.

Debtor's counsel further reported that he now believed that Debtor's ability to prosecute this case on his own was impaired.

The court issued an Order continuing the hearing to November 14, 2018 and ordering the following parties to appear in person at the continued hearing:

1. Susan Rose, identified as Debtor's sister and current holder of a power of attorney;
2. Eric Jeppson, Esq., attorney for Ms. Rose;
3. Lori Childe, identified as Debtor's former care giver, holder of power of attorney, and roommate; and
4. Thomas Warren, the Debtor

Order, Dckt. 47. To be determined at the continued hearing is who the actual real party in interest is for

the Debtor—whether it is the Debtor or a person with a power of attorney who must be appointed as a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014, and 1004.1.

Additionally, the court ordered that any supplemental pleadings be filed on or before October 30, 2018. *Id.*

#### **NOVEMBER 14, 2018 HEARING**

At the hearing counsel for the Debtor stated that he met with his client the morning of the hearing. Counsel believes that what appears to be his current condition, a personal representative under Rule is appropriate.

Counsel for the Debtor's sister reported that the sister concurs with the need for an appointment of a personal representative.

The court continued the hearing on the Motion to Dismiss to afford Debtor and his Counsel the opportunity to file a motion for appointment of a personal representative.

#### **FEBRUARY 20, 2019 HEARING**

At the hearing, the court continued the hearing to March 20, 2019 to be heard alongside the Debtor's Motion to Approve Nomination of Debtor's Representative.

#### **MARCH 20, 2019 HEARING**

At the March 20, 2019 hearing the court heard and denied Debtor's Motion to Approve Nomination of Debtor's Representative that was set for hearing that day. Civil Minutes, Dckt. 65. The court continued this hearing to afford Debtor one final opportunity to demonstrate the Debtor's competency impairment and obtain the appointment of a personal representative.

The denial of the Motion for Appointment of the proposed personal representative was due to the abject failure of the proposed personal representative and Debtor's counsel to present credible evidence of Debtor's mental health condition. The findings of the court from that denial include:

At the insistence of the court, Debtor's counsel and the Proposed Personal Representative have been given the "opportunity" to provide the court with the necessary evidence of independent professional testimony for the court to make the competency determination. In its prior tentative ruling the court provided the above description of competency and determination thereof under applicable state law. However, the best that counsel and Proposed Personal Representative could produce was the following "To Whomever It May Concern" Doctor's Note:

To Whom It May Concern:

Thomas Warren was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.

Please feel free to contact my office, if you have any further questions.

Exhibit, Dckt. 62. The Note does not provide testimony under penalty of perjury.

Debtor's attorney has prepared a declaration for Proposed Personal Representative in which she purports to "authenticate" the Note, presumably as some attempt to make it admissible, credible evidence. At best, this is hearsay, in which the sister is purporting to repeat what is in the Note, which purports to be statements made out of court by the Doctor. FN. 1.

The deficiencies in the purported "Doctor's Note" are many. First, by it being generically added "To Whom It May Concern," it appears that the Doctor had no idea why he was being asked to consider the competency of the Debtor. The Doctor was not aware of the significance in what he was saying or that it would be used to limit the Debtor's ability to access the federal courts. One questions the validity of such a "medical opinion" that is written in such a way that it could be used for any and every purpose to limit or deprive the Debtor of rights.

Second, merely stating his conclusion that "my patient is not capable of making complex, legal and financial decisions due to his medical condition," without providing the information based on his professional training and experience is of little, if any, assistance to the court in making the necessary determination. See Fed. R. Evid. 702.

Third, this "medical opinion" merely states that the Debtor is not capable of making "complex, legal and financial decisions." Some would say that the average least sophisticated consumer who is a party in bankruptcy court every day might suffer from such "complex decision" limitation. The Doctor offers no indication as to what is meant by "complex" or whether Debtor, represented by independent counsel, is capable of making the normal and usual decisions in his bankruptcy case.

Fourth, there is only a general reference to "medical condition." This could be a permanent and significant cognitive impairment. Or it may be that Debtor is suffering from a temporary medical condition from which he could recover sufficiently in the near future. The Doctor fails to provide, or withholds, such critical information.

Fifth, the Doctor offers no statement of how he has come to this "Opinion," the examinations of the Debtor, and how such "Opinion" has been reached after providing adequate medical professional due diligence in conformity with the standards of practice.

The Doctor does not state how long the Debtor has been his "patient," his consultation with other doctors who have provided medical services to Debtor, or a review of Debtor's medical history. Rather, based on the Proposed Personal Representative's testimony, it is she who selected the Doctor who has issued this "To Whom It May Concern" Note.

...

In her Supplemental Declaration (after the court did not grant the request for appointment of a personal representative), the Proposed Personal Representative qualifies her prior testimony, stating that Debtor could actually care for himself physically and carry on a conversation, but could become confused "from time to time" and could not keep schedule appointments. Supplemental Declaration, ¶ 3; Dckt 63. These statements under penalty of perjury are not consistent with the personal representative's prior statements under penalty of perjury.

In the Supplemental Declaration the Proposed Personal Representative also states that she took the Debtor to an attorney to obtain a power of attorney. The attorney is not identified (though a law firm is named on the power of attorney). It is not stated whether the attorney was the Debtor's attorney or the Proposed Personal Representative's attorney.

With respect to the Doctor's Note, the Proposed Personal Representative states that she selected a doctor who is 222 miles from Debtor's residence. Nothing is stated about Debtor's long time doctor(s) in the Auburn area where he has resided. In her Declaration, the personal representative states that Debtor was released to her custody in the Summer of 2018 after a law enforcement intervention. That was after this case was filed, and Debtor may have moved, may have new doctors, and may no longer reside in Auburn, California. But such testimony is not provided. And again, the Doctor issuing the "To Whom It May Concern" Doctor's Note does not disclose any investigation with prior doctors of Debtor or review of Debtor's medical history.

Civil Minutes, Dckt. 64.

In concluding the ruling and having identified serious shortcomings by those who owe fiduciary duties to the Debtor, including those seeking to be his personal representative, the court's findings and conclusions state:

Debtor's counsel appeared at the hearing, advising the court that he recognized the shortcomings in the pleadings, but requested additional time to work with the proposed personal representative and the doctor who provided the Doctor's Note. Given that the matter has been continued and the evidence presented to be a generic one sentence Note" for which no testimony was provided, the court is reluctant to allow these three to proceed further.

Rather than referring this matter to Adult Protective Services, the U.S. Attorney, and U.S. Trustee, Debtor's counsel was able to convince to allow the Debtor one more chance to have a representative appointed before bringing in Adult Protective Services.

*Id.* at 8. The court further noted that in light of the failures of these various persons to act to protect the rights of the Debtor:

The court denies this Motion without prejudice to allow Debtor's sister, the proposed personal representative, to be considered for the position. However, Debtor must obtain special counsel who is experienced in federal court and comes with a solid reputation in this federal court. That attorney will be the one who will assemble the motion and supporting evidence for the appointment of a personal representative and then effectively prosecute such a Motion.

Debtor's current counsel proposed going back to Dr. Zaheen to have her now provide for detailed testimony. The court finds that proposition untenable. The court finds the Doctor's credibility to be so compromised by providing a "To Whom It May Concern Note" that might be used for who knows what purpose to deprive the Debtor of his rights in this case, that Dr. Zaheen cannot be a witness to provide testimony to the court. (See discussion above of the "To Whom It May Concern" one sentence Note declaring the Debtor not competent.)

*Id.* at 9. To afford these various persons with fiduciary duties to the Debtor to step up and make sure that his rights and interests were not damaged/lost/forfeited, the court instructed the Clerk of the Court to Serve informational copies of the order and the Civil Minutes on:

Rokhshana Zaheen, M.D.  
Community Medical Providers Medical Group  
Community Foundation CMP, Reedly North  
748 Manning Ave  
Reedley, California 93654-2232

and

The Attorney Who Provided Legal Services to Thomas Warren  
Jeppson & Griffin, LLP  
1478 Stone Point Drive, Ste 100

Roseville, California 95661;

each of whom have independent professional obligations to Thomas Warren, the Chapter 13 Debtor in this bankruptcy case.

*Id.*

Since March 20, 2019, the file in this case has become silent as to these various persons with duties to the Debtor, including his sister who sought to be appointed his personal representative.

This lack of action causes the court great concern.

Now, the creditor having a claim secured by Debtor's residence is seeking relief from the stay to foreclose. In the Motion for Relief, the basic allegations include: (1) Debtor's monthly payment is \$237.07; (2) since the filing of this bankruptcy case Debtor has defaulted in payments totaling \$1,715.39; and (3) the only legal basis for seeking the relief is that the Defaulted in post-petition payments - 11 U.S.C. § 362(d)(1) "for cause" grounds.

## **DISCUSSION**

A review of the docket shows nothing has been filed since the prior hearing, including a new motion to appoint representative.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

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

11. [19-20736-E-13](#)  
[DPC-2](#)

GEORGE FRANCIS  
Pro Se

MOTION TO DISMISS CASE  
4-16-19 [21]

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

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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 (*Pro Se*) and Office of the United States Trustee on April 16, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, George Manhai Francis ("Debtor"), failed to appear at the April 11, 2019 Meeting of Creditors. The Meeting was continued to June 13, 2019.
2. Debtor is delinquent \$1,099.83 in plan payments.
3. Debtor has not provided to Trustee the necessary business documents.
4. Debtor has not provided to Trustee his tax return or transcript for the most recent prepetition filing year.

## 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 is \$1,099.83 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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).

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).

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. [17-27640-E-13](#)  
[DPC-2](#)

**ROBERT RODNI**  
**Mark Wolff**

**MOTION TO DISMISS CASE**  
**4-26-19 [58]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Robert James Rodni ("Debtor"), is \$5,147.00 delinquent in plan payments.

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

Debtor filed an Opposition to the Motion on May 14, 2019. Dckt. 62. Debtor explains he fell delinquent in payments due to unexpected expenses, including falling ill, taking care of his ill mother, making necessary vehicle repairs, and losing time at work.

Debtor states further he intends to file a modified plan prior to the hearing.

#### **DISCUSSION**

Debtor is \$5,147.00 delinquent in plan payments, which represents multiple months of the \$2,490.27 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.

13. [18-26943-E-13](#)      **KEVIN GOODMAN**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Michael O Hays**                      **4-5-19 [28]**

**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 April 5, 2019. By the court’s calculation, 54 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Kevin Goodman (“Debtor”), is \$348.00 delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 10, 2019. Dckt. 32. Debtor's counsel states Debtor has not contacted him regarding the Motion, but is optimistic the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

Debtor is \$348.00 delinquent in plan payments, which represents multiple months of the \$172.00 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.

14. [16-20144-E-13](#)  
[DPC-2](#)

**GLENDA STERN**  
**Mary Ellen Terranella**

**MOTION TO DISMISS CASE**  
**4-29-19 [49]**

**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 April 29, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Glenda Stern ("Debtor"), is \$1,469.00 delinquent in plan payments.

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

Debtor filed an Opposition May 15, 2019. Dckt. 53. Debtor states payments of \$320.00 and \$640.00 were made after the filing of the Motion, and the remaining delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

Debtor is \$1,469.00 delinquent in plan payments, which represents multiple months of the \$640.00 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.

15. [18-21644-E-13](#)      **ANGELO/LISA OLIVA**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Anh Nguyen**                      **5-1-19 [85]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 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 the debtors, Angelo Aroldo Stefano Oliva and Lisa Renee Oliva (“Debtor”), are \$13,280.00 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition to the Motion on May 15, 2019. Dckt. 89. Debtor states Debtor

fell delinquent due to unforeseen medical bills (joint-debtor having been diagnosed with cancer), and that the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

Debtor is \$13,280.00 delinquent in plan payments, which represents multiple months of the \$6,640.00 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.

16. [16-26649-E-13](#)      **LA RON/KIAUNA NORMAN**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Susan Turner**                      **4-29-19 [25]**

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, La Ron Anthony Norman and Kiauna Ada LaBelle Norman (“Debtor”), are \$12,104.00 delinquent in plan payments.

**DEBTOR’S REPLIES**

Debtor filed an a Reply on May 14, 2019, and Supplemental Reply on May 15, 2019. Dckts. 29, 31. In the Replies Debtor states either the delinquency will be cured or a new plan will be filed.

**DISCUSSION**

Debtor is \$12,104.00 delinquent in plan payments, which represents multiple months of the \$4,035.00 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 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.

17. [17-27449-E-13](#) **BONITA MELENDEZ** **MOTION TO DISMISS CASE**  
[DPC-5](#) **Rick Morin** **5-1-19 [91]**

**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 May 1, 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 the debtor, Bonita Thomas Melendez (“Debtor”), is \$7,534.60 delinquent in plan payments.



## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 9, 2019. Dckt. 95. Debtor states the Motion should be denied in the event the delinquency is cured by the time of the hearing on the Motion.

## **DISCUSSION**

Debtor is \$7,534.60 delinquent in plan payments, which represents multiple months of the \$2,516.92 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.

18. [17-24755-E-13](#)      **ROBBIE/CHRISTI HOLCOMB**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Candace Brooks**                      **4-9-19 [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.

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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 April 9, 2019. By the court’s calculation, 50 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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, Robbie Allan Holcomb and Christi Anna Holcomb (“Debtor”), are \$4,780.00 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response to the Motion on May 14, 2019. Dckt. 50. Debtor explains Debtor’s retirement funds were not sufficient to support the Plan, Debtor has now secured full time employment , and that a modified plan will be filed prior to the hearing date.

**DISCUSSION**

Debtor is \$4,780.00 delinquent in plan payments, which represents multiple months of the \$1,195.00 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.

19. [17-23659-E-13](#)      **FRANCISCO DOMINGUEZ**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Thomas Gillis**                      **4-29-19 [52]**

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

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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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Francisco Ivan Dominguez (“Debtor”), is \$1,631.72 delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an "Objection" to the Trustee's Motion on May 15, 2019 (which the court interprets to be an opposition). Dckt. 56. Debtor states he is working to cure the delinquency prior to the hearing date.

## **DISCUSSION**

Debtor is \$1,631.72 delinquent in plan payments, which represents slightly more than one month of the \$1,560.92 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.

20. [15-28165-E-13](#)      **LEON VICENTE AND ANGELA**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **XILOJ**                                      **4-29-19 [114]**  
                                    **Thomas Gillis**

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Leon Felipe Vicente and Angela Xiloj (“Debtor”), are \$930.00 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 15, 2019. Dckt. 118. Debtor states he is working to cure the delinquency prior to the hearing date.

**DISCUSSION**

Debtor is \$930.00 delinquent in plan payments, which represents multiple months of the \$465.00 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.

21. [18-23365-E-13](#)      **TENA ROBINSON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Jason Borg**                      **4-26-19 [124]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tena H. Robinson (“Debtor”), is \$7,350.00 delinquent in plan payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 21, 2019. Dckt. 128. A written response, if any, was required to be filed by May 15, 2019. LOCAL BANKR. R. 9014-1(f)(1).

Debtor's counsel explained the filing of the untimely opposition was because **XXXXX**.

In reviewing the Opposition, it states Debtor's financial circumstances changed and therefore a modified plan became necessary, which plan was filed May 21, 2019.

## DISCUSSION

Debtor is \$7,350.00 delinquent in plan payments, which represents multiple months of the \$2,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In reviewing the docket, a Modified Plan and corresponding Motion To Confirm was filed May 21, 2019. Dckts. 131, 132. The Motion states the following with particularity (FED. R. BANKR. P. 9013):

1. Debtor requests the Modified Plan be confirmed.
2. The Modified Plan proposes payments of \$0.00 for three months and \$2,450.00 for 45 months. Debtor's Schedules demonstrate an ability to make these payments.
3. The Modified Plan provides for all secured creditors.
4. The Modified Plan is proposed in good faith.
5. Debtor requests the Modified Plan be confirmed.

Motion, Dckt. 132. On its face, the Motion is deficient, and does not state with particularity all the grounds necessary for confirmation. *See* 11 U.S.C. §§ 1322, 1325.

Furthermore, no supplemental schedules have been filed to provide updated financial information in support of the Modified Plan's confirmation. While it is possible Debtor's income and expenses have remained static in the year since filing, that has not been stated to the court.

Debtor states in her Declaration with the Opposition that her income has returned to normal because her main client is no longer hospitalized. Declaration ¶ 2, Dckt. 129. However, this highlights a possible issue with confirmation—namely that Debtor's income may not be reliable going forward. Possibly allowing Debtor to continue would cause unreasonable delay. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

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

22. [15-22166-E-13](#)      **MARK/MARY TAYLOR**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Julius Cherry**                      **4-26-19 [73]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Mark Seymour Taylor and Mary Maxine Taylor (“Debtor”), are \$1,898.00 delinquent in plan payments. Debtor has made \$35,244.00 in plan payments.



## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 15, 2019. Dckt. 78. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

Debtor is \$1,898.00 delinquent in plan payments, which represents multiple months of the \$788.00 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.

23. [18-21768-E-13](#)  
[DPC-2](#)

KATRINA CULVERSON  
Scott Hughes

MOTION TO DISMISS CASE  
4-25-19 [42]

**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 April 25, 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, Katrina Culverson ("Debtor"), is \$6,760.66 delinquent in plan payments.

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

Debtor filed a Declaration in Response to the Motion on May 15, 2019. Dckt. 46. Debtor's counsel Mr. Hughes testifies that Debtor has not contacted him regarding the Trustee's Motion, but requests the court allow Debtor until the time of the hearing to cure the delinquency.

#### **DISCUSSION**

##### **Failure to Comply with Local Rules**

Debtor's counsel filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

## **Delinquency in Plan Payments**

Debtor is \$6,760.66 delinquent in plan payments, which represents multiple months of the \$3,291.94 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.

24. [18-25668-E-13](#)      **CHARLIE/CHRISTINA BOGGS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mark Shmorgan**                      **5-1-19 [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 May 1, 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 he debtors, Charlie Boggs and Christina Boggs (“Debtor”), are \$1,300.00 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 2, 2019. Dckt. 27. 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.

25. [18-21672-E-13](#)      **JOSE/JEANNETTE PAGTALUNAN MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Scott Hughes**    **5-1-19 [57]**

**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 May 1, 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 the debtors, Jose Pagtalunan and Jeannette Pagtalunan (“Debtor”), are \$8,397.83 delinquent in plan payments, which represents multiple months of the \$4,208.37 plan payments.

## **DEBTOR'S OPPOSITIONS**

Debtor's counsel Scott Hughes filed a Declaration in opposition and Amended Declaration in opposition to the Motion on May 15, 2019. Dckts. 61, 63.

Debtor's counsel testifies he was "told" him several facts resulting in the delinquency in plan payments. Debtor's counsel does not explain why this testimony is admissible evidence. *See* FED. R. EVID. 801, *et, seq.*

Debtor's counsel filed in support of the Opposition as Exhibit A a document titled "Payment Plan To Catch Up." Exhibit A, Dckt. 64. No testimony was provided to authenticate or explain the document.

## **DISCUSSION**

### **Failure to Comply with Local Rules**

Debtor's counsel filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

### **Failure To Comply with Federal Rules of Evidence**

As discussed above, testimony has been presented which appears to be inadmissible hearsay evidence. *See* FED. R. EVID. 801, *et, seq.* Furthermore, documents are filed which Debtor's counsel refers the court to examine, but for which there was no testimony to authenticate or explain those documents.

### **Delinquency in Plan Payments**

Debtor is \$8,397.83 delinquent in plan payments, which represents multiple months of the \$4,208.37 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.

26. [15-27974-E-13](#)      **ZOROBABEL GARCIA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Thomas Gillis**                      **4-26-19 [35]**

**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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Zorobabel Garcia (“Debtor”), is \$2,718.00 delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 15, 2019. Dckt. 39. Debtor states the Debtor is working to cure the delinquency prior to the hearing date.

## **DISCUSSION**

Debtor is \$2,718.00 delinquent in plan payments, which represents multiple months of the \$1,529.00 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.



27. [19-20477-E-13](#)      **DANIEL ARANA**  
[DPC-2](#)                      **Mark Shmorgan**

**MOTION TO DISMISS CASE**  
**4-29-19 [27]**

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Daniel Arana (“Debtor”), is \$2,743.50 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response to the Motion on May 2, 2019. Dckt. 31. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

Debtor is \$2,743.50 delinquent in plan payments, which represents slightly more than one month of the \$2,700.50 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).

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.

28. [18-22378-E-13](#)      **PATRICIA COLEMAN**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Muoi Chea**                      **5-1-19 [25]**

**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 May 1, 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 the debtor, Patricia Diane Coleman (“Debtor”), is \$1,444.00 delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Motion on May 9, 2019. Dckt. 30. Debtor states a modified plan will be filed prior to the hearing date.

## **DISCUSSION**

Debtor is \$1,444.00 delinquent in plan payments, which represents multiple months of the \$584.00 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.

29. [17-22982-E-13](#)  
[DPC-5](#)

SANDRA AVILA  
Michael Hays

MOTION TO DISMISS CASE  
4-25-19 [69]

**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 April 25, 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, Sandra Avila ("Debtor"), is \$690.00 delinquent in plan payments.

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

Debtor filed a Response to the Motion on May 10, 2019. Dckt. 73. Debtor's counsel states he expects the delinquency will be cured prior to the hearing date, but if not then counsel requests te hearing be continued to June 11, 2019 to allow additional time to cure.

#### **DISCUSSION**

Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Furthermore, nothing has been presented such as a declaration explaining how Debtor is able to come up with funds necessary to cure to demonstrate good cause for a continuance.

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.

30. [18-26184-E-13](#)      **OLEG/SOMMER ZHURKO**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Marc Shmorgan**                      **4-26-19 [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 April 26, 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Oleg Zhurko and Sommer Zhurko (“Debtor”), are \$3,588.00 delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on April 26, 2019. Dckt. 30. Debtor state the delinquency was the result of customers delaying payment, which issue has been resolved. Debtor testifies Debtor will be current in payment by the hearing date.

## **DISCUSSION**

Debtor is \$3,588.00 delinquent in plan payments, which represents multiple months of the \$1,196.00 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.

31. [18-20885-E-13](#)      **ANTHONY/WENDY GIANOLA**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Peter Macaluso**                      **4-25-19 [88]**

**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 April 25, 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 XXXXXXXXXXXXXXXXXX.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Anthony Paul Gianola and Wendy Elaine Gianola (“Debtor”), are \$6,764.92 delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition May 15, 2019. Dckt. 92. Debtor states Anthony Paul Gianola moved out of state, and therefore Debtors request additional time to employ a realtor and gather other documents necessary to sell their residence.

The Declaration of Wendy Elaine Gianola was filed in support of the Opposition and adds that she and her husband are divorcing, and that he has left the State of California. Dckt. 94.

**DISCUSSION**

Debtor is \$6,764.92 delinquent in plan payments, which represents multiple months of the \$3,410.10 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).

An Amended Plan was filed October 30, 2018 (Dckt. 60) which was confirmed on March 11, 2018. Dckts. 86, 87. That plan provides for plan payments, not for the sale of Debtor’s residence.

If circumstances have changed that require a change in the Chapter 13 Plan, the proper course is to file and set for confirmation hearing a Modified Plan.

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



**No Appearance Required by Counsel for Debtor  
if No Basis for Opposition to be Stated at Hearing**

**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 April 8, 2019. 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 granted, and the case is dismissed.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jamie Leigh Celaya ("Debtor"), is \$651.00 delinquent in plan payments.

**DEBTOR'S RESPONSE**

Debtor filed a Response on April 9, 2019. Dckt. 74. Debtor states there is no basis to oppose the Motion.

**DISCUSSION**

Debtor is \$651.00 delinquent in plan payments, which represents multiple months of the \$217.00 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.

## **No Appearance Required by Counsel for Debtor if No Basis for Opposition to be Stated at Hearing**

**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 April 29, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Pamela Lynn McGaughy ("Debtor"), is \$1,150.00 delinquent in plan payments.

### **DEBTOR'S RESPONSE**

Debtor filed a Response on May 10, 2019 stating Debtor has no basis to oppose the Motion. Dckt. 93.

### **DISCUSSION**

Debtor is \$1,150.00 delinquent in plan payments, which represents multiple months of the

\$550.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

34. [15-29089-E-13](#)      **JORDAN/HANNAH DONAHUE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mikalah Liviakis**                      **4-26-19 [41]**

**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 April 26, 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 ~~granted, and the case is dismissed.~~**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Jordan James Donahue and Hannah Marie Donahue (“Debtor”), are \$1,498.00 delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 20, 2019. Dckt. 45. Debtor states the delinquency was cured after Debtor paid \$1,498.00. Declaration ¶ 2, Dckt. 46.

**DISCUSSION**

Debtor was \$1,498.00 delinquent in plan payments, which represents multiple months of the \$749.00 plan payment. Debtor presented testimony that the delinquency was cured. Declaration ¶ 2, Dckt. 46.

However, before the hearing another plan payment will be due.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

~~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.~~

35. [16-28495-E-13](#)      ANN ADAMS      MOTION TO DISMISS CASE  
[DPC-3](#)                      John Sargetis                      4-29-19 [73]

**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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Ann May Adams (“Debtor”), is \$411.00 delinquent in plan payments.

## STATEMENT OF DEBTOR'S ATTORNEY

Debtor's attorney John Sargetis filed a Statement of Debtor's Attorney on May 8, 2019. Dckt. 77. Debtor's counsel states he was informed on May 8, 2019 Debtor made the April 2019 payment and will make the May 2019 payment on May 22, 2019.

## TRUSTEE'S REPLY

Trustee filed a Reply on May 13, 2019. Dckt. 79. Trustee confirms the April 2019 payment was made, but notes the May 2019 payment will become due before the date of the hearing.

Trustee notes further Debtor's counsel has not provided his name and address on the filed pleadings as required by the Local Bankruptcy Rules. Additionally, that the Trustee has received mail returns for documents served on Debtor's counsel's address of record (which is the same as that listed by the California State Bar).

## DISCUSSION

### Failure to Comply with Local Rules

Debtor's counsel filed a Statement instructing the court Debtor is now current in payments. Dckt. 77. In this district, the court requires evidence to be filed in support of every motion or request for relief. LOCAL BANKR. R. 9014-1(d)(3)(D).

Furthermore, Local Bankruptcy Rule 9004-1(b) requires counsel to provide in the upper left hand corner of the first page of each document presented for filing the name, address, telephone number, and California State Bar membership number of all counsel. The Statement filed does not meet this requirement.

In this instance, the practical benefit of the rule is providing Trustee an address upon which to provide the Debtor's attorney notice of the Motion and other pleadings filed in the case.

Counsel is reminded that not complying with the Local Bankruptcy Rules is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

### Delinquency in Plan Payments

Debtor was \$411.00 delinquent in plan payments, which represents one month of the plan payment. While Trustee has presented evidence that Debtor has made that payment, another payment will become due before the hearing on the Motion.

At the hearing, ~~xxxxxxxxxxxxxxxx~~.

~~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.~~



36. [18-20738-E-13](#)  
[DPC-5](#)

TAUJAI CAREY  
Richard Jare

MOTION TO DISMISS CASE  
5-1-19 [108]

**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—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 May 1, 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). 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.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Taujai Donae Carey ("Debtor"), is \$1,162.00 delinquent in plan payments.

However, no supporting Declaration was filed with the Motion to establish what Debtor has and has not paid.

At the hearing, xxxxxxxxxxxxxxxx.

## DISCUSSION

~~Debtor is \$1,162.00 delinquent in plan payments, which represents multiple months of the \$470.00 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(e)(1).~~

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

~~is dismissed.~~

No evidence having been presented to show Debtor is delinquent, the Motion 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.**

**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 April 26, 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 granted, and the case is dismissed.~~**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Kristy K. Neal ("Debtor"), is \$1,200.00 delinquent in plan payments.

#### DEBTOR'S OPPOSITION

Debtor's counsel Richard Jare filed an Opposition on May 16, 2019, which is only 13 days prior to the hearing. Dckt. 98. Local Rule 9014-1(f)(1) requires a reply or opposition be filed 14 days prior to the hearing. The court *sua sponte* shortens the opposition filing period to that actually given.

Debtor's counsel provides a lengthy response in the Opposition to explain why the untimely filing was the Debtor's, TFSMoneyGram's, and Trustee's fault. The court summarizes those arguments as follows:

1. One other of Mr. Jare's clients was experiencing issues with payment going through TFSMoneyGram and therefore Mr. Jare instructed Debtor payment made May 15, 2019 may be futile and an opposition filed with 13 days' notice is usually fine. Opposition, Dckt. 98 at p. 1:19-26.

Here, Debtor's counsel appears to indicate filing an opposition where the delinquency has not been cured is pointless. However, Debtor's counsel, having been instructed (the attorneys collectively in open court) very many times over his years of practice in this district knows that such is not the case – with the filing of an opposition stating how Debtor is attempting to cure the default working to preserve the right to

appear and argue at the hearing (as well as proudly advise the court that the default has been cured in many cases).

2. Debtor had not made payments since February 2019, so filing an opposition would typically have been futile. However, Debtor's counsel believes here Debtor would be able to cure the delinquency. *Id.* at p. 1:27-2:4. Debtor did not make any payment by the time the opposition as filed. *Id.* at p. 2:5-7.

It seems Debtor's counsel is arguing he was waiting on payment to be made. However, counsel does not explain why Debtor has not made payments over the past three month, or why Debtor has not delivered a cashier's check to the Trustee (shying away from the TFS payment program).

3. Debtor's counsel asks the court treat this Motion as brought on 14 days' notice pursuant to Local Rule 9014-1(f)(2) due to his mistake. Debtor's counsel explains his "mistake" was in providing Debtor an unaltered email from the Trustee which allegedly included a statement that the Motion will be in effect on Local Rule 9014-1(f)(2) notice if Debtor becomes current before the hearing date.

Debtor's counsel further explains that "the debtor, upon seeing the trustee email, may have assumed that I am not doing the best job possible by demanding an opposition with evidence right now," and "the court and the trustee is entitled to a response to this motion NOW or perhaps yesterday, and I do not need to be reminded that the court expects it." *Id.* at p. 2:8-27.

Here, Debtor's counsel explains that he capitulated to the Debtor's opinion as to legal strategy in this case. After being shown the Trustee's courtesy reminder of the current Motion, Debtor somehow obtained a knowledge of the Local Bankruptcy Rules and decided no written opposition was necessary. Debtor then seemingly provided this legal advice to Debtor's counsel.

Further, while counsel states he does not need to be reminded the court expects a timely response (notably this is not what the court "expects," it is simply what the Local Bankruptcy Rules require), he also states he advised Debtor payment on May 15, 2019 "may be futile" and that the court "is sometime willing to overlook the fact that a 1 day delay to reply is not significant."

4. Debtor's counsel gave Debtor the option of completing and signing a declaration and did not. *Id.* at p. 2:18-21.
5. Debtor's counsel hopes his forwarding of Trustee's unaltered email will not discourage Trustee from making courtesy reminders in the future.

**DISCUSSION**

The day late in the filing of the Opposition could have been addressed with a simple ex parte motion to shorten time for filing the Opposition. Though not made as an ex parte motion, such request is buried in the Opposition.

**Delinquency in Payment**

While the one day late Opposition, to prevent the dismissal from being entered as a final ruling, has been resolved, the substance of the Motion has not been. To borrow that classic command from Jerry Mcguire, the Trustee has said - "Show me the money!" <sup>FN. 1</sup>

The money is what is now missing as of the hearing on May 29, 2019.

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FN. 1. Jerry Maguire is a 1996 American romantic comedy-drama sports film written, produced and directed by Cameron Crowe, and stars Tom Cruise, Cuba Gooding Jr. and Renée Zellweger. "Jerry Maguire (Tom Cruise) is a glossy 35-year-old sports agent working for Sports Management International (SMI). After having a life-altering epiphany about his role as a sports agent, he writes a mission statement about perceived dishonesty in the sports management business and his desire to work with fewer clients so as to produce better quality." [https://en.wikipedia.org/wiki/Jerry\\_Maguire#Plot](https://en.wikipedia.org/wiki/Jerry_Maguire#Plot).  
-----

Debtor is \$1,200.00 delinquent in plan payments, which represents multiple months of the \$400.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

However, at the hearing ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

~~-----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.~~

38. [19-20302-E-13](#)      **HSIN-SHAWN SHENG**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Richard Jare**                      **4-23-19 [64]**

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

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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 April 23, 2019. By the court’s calculation, 36 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, Hsin-Shawn Cyndi Sheng (“Debtor”), has not filed, served, and set for confirmation a new proposed plan since the court sustained Trustee’s Objection To Confirmation of the prior plan on March 26, 2019. Dckt. 56, 57.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 15, 2019. Dckt. 72. Debtor states the following:

There are problems as outlined in the various documents and in the request for judicial notice filed today. A modified plan is coming soon. At present the debtor is suffering from diminished income because the Chapter 7 trustee has caused income flow to be suspended. We are acting to rectify this.

*Id.* The Request for Judicial Notice referenced in the Opposition states the following:

The debtor herein requests that the court take judicial notice of Documents 146 through 158 in Case number 17-25114-E-7

Dckt. 73.

Debtor filed her Declaration in support of the Opposition. Declaration, Dckt. 75. The Declaration adds the following explanation to shed light on the Opposition which does not offer any explanation of failure to propose a new plan:

1. I understand that my attorney is showing the trustee and the court the difficulties that I am having in connection with my other pending case. This has caused complications.
2. I do want to continue with the Chapter 13 to save my home from foreclosure. I will be review a modified plan closely as soon as my attorney can prepare one in the next couple days.

*Id.*

## DISCUSSION

When the Trustee filed the Motion, Debtor had not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 26, 2019.

Debtor's Opposition does not state grounds with particularity (FED. R. BANKR. P. 9013) in support of Debtor's request that the Motion be denied. The court is told the Chapter 7 Trustee in Debtor's Chapter 7 Case, No. 17-25114 ("Chapter 7 Case"), has stopped Debtor's cash flow, and Debtor is working to solve the problem. Debtor then requests the court take judicial notice of several documents filed in Debtor's other case to discover the extent of the "problem" here.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole.** It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

**This category is also limited to facts presently generally known within the jurisdiction.** Obviously, as time passes, the character of a jurisdiction in terms of

its occupations, etc., will change. Accordingly, what a court might properly take judicial notice of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

**The second subcategory** of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.

The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday;



Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table; time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

What Debtor's counsel actually asks here is that the court review documents that have already been filed with the court. These documents are within the court's records.

In reviewing the documents referenced, the court first notes that the range of documents does not pin-point any document to enlighten the court. Docket Number 146 in Debtor's Chapter 7 Case is a Proof of Service.

In digging through the range of pages provided, two motions are filed: a motion to convert the Chapter 7 case to one under Chapter 11, and a motion to compel professionals of the estate to file fee applications. Bankr. E.D. Cal. No. 17-25114, Dckts. 147, 149. In reviewing those motions the general allegation is that the chapter 7 trustee is attempting to liquidate Debtor's property to pay unsecured claims and administrative expenses in the case.

While it may appear to the Debtor that the filing of these motions creates a self-evident explanation for why the hearing on this Motion needs to be continued, such is not so clear to the court.

Rather, it appears that Debtor's Chapter 13 case relies on assets of the Debtor which may be administered in Debtor's pending Chapter 7 case.

Whether those assets are administered or whether allegations made by Debtor in the motion to convert the Chapter 7 case to 11 are correct, the question remains why creditors in this case should be forced to sit and wait on a result.

### **1<sup>st</sup> Amended Plan Filed May 23, 2019**

Debtor's 1<sup>st</sup> Modified Plan has been filed. Dckt. 80. With respect to the required Plan payments, the additional provisions state:

Section 7.10 - - NonStandard Provisions, for section 2.01, merely expanded entries:

Monthly plan payments. To complete this plan, Debtor shall submit to the supervision and control of Trustee on a monthly basis the sum of \$ Debtor shall pay \$1000 for each of the first 6 months and thereafter \$3500 from future earnings. This monthly plan payment is subject to adjustment pursuant to section 3.07(b)(2) below and it must be received by Trustee not later than the 25th day of

each month beginning the month after the order for relief under chapter 13. The monthly plan payment includes all adequate protection payments due on Class 2 secured claims.

Dckt. 80 at 9.

For the Citibank, N.A., as Trustee, claim, Debtor states that she will seek a loan modification. *Id.*, ¶ 7.02. The adequate protection payment (11 U.S.C. § 361) to be made Citibank, N.A., as Trustee, on its (\$1,272,304.32) secured claim, for which there is a (\$673,126.03) pre-petition arrearage, Proof of Claim No. 2, is to be \$565.00. This is stated by the Debtor to only be sufficient to pay the projected costs of insurance and property taxes, with this payment to “resume” in July 2019. *Id.* ¶ 7.04.

Then, beginning in September 2019, the monthly adequate protection payment will increase to \$2,700, of which \$1,120 a month is for property taxes and insurance, and \$1,580 for “principal and interest.” *Id.*

On her Amended Schedule I Debtor states that her monthly gross income is \$6,336, which consists of \$1,234 of business/rental income, \$1,198.00 of Social Security, and \$3,904.00 of “INCREASED Draws & Income Stream/Bangeter Investment (which Debtor states will only be available if she confirms a Chapter 13 Plan). Dckt. 25 at 1-2. Generating the business/rental income is dependent on the Chapter 7 Trustee in the Debtor’s Chapter 7 case abandoning the property generating the income to Debtor. *Id.*

On Amended Schedule J Debtor states that she has (\$2,836) in monthly expenses, excluding mortgage payments, property taxes, and insurance. *Id.* at 4-6. These expenses include (\$225.00) to maintain “Hyatt & Diamond” timeshares. However, for the next five years Debtor’s expenses provide:

\$550 for food and housekeeping supplies

Assuming \$75 a month for housekeeping supplies, that leave  
\$475 for food, which is a 30 day month averages (\$5.27) per meal.

\$250 for transportation - Debtor listing a 2014 C250 Mercedes Benz on Schedule A/B (Dckt. 1 at 13).

The \$250.00 a month is for gas, maintenance, repairs, registration. Assuming \$50 a month for maintenance and repairs and \$20 for registration, that leaves \$150 for gas. At \$4.00 a gallon, Debtor can purchase 38 gallons a month, which at an average of 20 miles to the gallon gives Debtor a driving range of 760 miles.

\$71 for entertainment

\$150 for medical and dental expenses

These appear to present a challenging economic scenario for Debtor.

On Schedule A/B Debtor lists the property securing the Citibank, N.A., as Trustee, claim to have a value of \$940,000.00

Using the Microsoft Loan Calculator Program, *if* the creditor modifies the loan balance down to what Debtor says the property is worth, *and if* the creditor fully amortizes the new loan balance over thirty years, *and if* the creditor allows a 5% interest rate for a 100% loan to value ratio loan, then *just the monthly principal and interest payment* would be (\$5,046.12). Debtor tells us in the Plan that monthly escrow amount for property taxes and insurance is (\$1,120.00). Thus, just the monthly payments for principal, interest, taxes, and insurance would be (\$6,166.12).

Given that in Debtor's austere budget above there is only \$3,500.00 on net monies after the payment of her other reasonable and necessary expenses (Amended Schedule J, Dckt. 25 at 4-5), the Debtor falls short each month by (\$2,666.12) in having funds to pay a projected modified loan.

### **Debtor's Chapter 7 Case**

On May 13, 2019, Debtor and her counsel filed a Motion to Convert her Chapter 7 case to one under Chapter 11. 17-25114; Motion, Dckt. 149. In the Motion Debtor asserts that the Chapter 7 Trustee "has acted inappropriately in attempting to sell outside of the ordinary course of business, WITHOUT A COURT ORDER, property of the estate in an amount grossly disproportionate to the minuscule amount of unsecured claims." *Id.* at p. 2:1-4. Debtor notes that she has already received her Chapter 7 discharge in that bankruptcy case.

Debtor further asserts that the Trustee making demand for the Investment Fund brokered by Bangerter Financial Services, Inc. which Debtor had to be turned over to the Trustee is improper. Debtor is not arguing whether the investments are property of the bankruptcy estate, but asserts that by the Trustee instructing the sale of the investments so that they can be liquidated into cash to be administered by the bankruptcy estate is an improper "sale" of property of the bankruptcy estate without court order.

Debtor objects that the trustee has, by instructing Fidelity Investments to "remit those funds to the bankruptcy estate" tried to sell property without a court order.

*Id.*, p. 4:10-12. Debtor asserts that such sale of all the investment is unreasonable in that there are only (\$9,800) in general unsecured claims to be paid.

In the Trustee's Opposition, he states that he has not instructed the sale of such investments, just that he asserts the right to control property of the bankruptcy estate. *Id.*; Opposition, Dckt. 161. The Trustee asserts that when he asserted control over the investments the Debtor was attempting to sell the investments. The Trustee projects that \$40,200.00 is all that is required to administer the Chapter 7 estate. *Id.*, ¶ 23.

With the assistance of her former counsel in this case, Debtor filed her original Schedules on August 30, 2017. *Id.*; Dckt. 32. On Schedule A Debtor stated under penalty of perjury that her real property had a value of only \$830,000. *Id.*; Dckt. 32 at 2. She listed two other properties, one with a value of \$850,000 and the other with \$215,000. *Id.* at 3.

## Turnover of Property of the Estate

In the Chapter 7 Case the Trustee obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. *Id.*; Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

Debtor's Response fails to acknowledge that a bankruptcy estate has been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.

...

The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate.** 11 U.S.C. § 704, 721.

*Id.*; Civil Minutes, p. 5; Dckt. 108 (emphasis added).

## Apparent Quick Conclusion of Chapter 7 Case

There exists a very modest amount of claims and administrative expenses in the Chapter 7 case (at least modest in light of the very valuable investments which Debtor states exists and should not be "sold" by the Chapter 7 Trustee). A Debtor working in good faith with the Trustee could quickly identify the investments to be liquidated, claims and expenses paid, and Chapter 7 case closed. Then, all of the remaining property of the bankruptcy estate would be abandoned back to the Debtor when the Chapter 7 case was closed.

There would be no need to convert the case to one under Chapter 11 and incur \$20,000 to \$30,000 in Chapter 11 plan confirmation and administration expenses - so long as the Debtor was working to prosecute her Chapter 7 case in good faith. To the extent a trustee was attempting to act improperly and waste property of the bankruptcy estate by unnecessarily liquidating property of the bankruptcy estate, the Debtor and/or the U.S. Trustee seeking relief from the court would quickly put an end to such "shenanigans" (as a former law clerk for this court would say).

## RULING

Though Debtor has filed a proposed Modified Plan, based on the information provided such does not appear to be an economically feasible plan. Debtor's declaration in support of the Motion is consistent with the court's view that when Debtor chose to file her now Chapter 7 case she was long on

assets and short on creditors. Possibly, it was as simple as Debtor sought to retain a residence that she could not afford, under any circumstances to pay for, was unrealistic in the prior case, got it converted to Chapter 7, and is now seeking to relive the early Chapter 13 days of the prior case.

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

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

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

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

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

## FINAL RULINGS

39. [18-27506-E-13](#)      **CHRISTA HYLEN**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Peter Cianchetta**                      **4-29-19 [49]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.

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Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Christa Lynne Hylan (“Debtor”), is \$1,566.00 delinquent in plan payments.

### **DEBTOR’S REPLY**

Debtor filed a Reply on May 22, 2019. Dckt. 62. Debtor states a modified plan was filed and set for confirmation hearing June 25, 2019.

### **DISCUSSION**

Debtor is \$1,566.00 delinquent in plan payments, which represents multiple months of the \$783.00 plan payment. Before the hearing, another plan payment will be due.

### **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on May 17, 2019. Dckt. 53. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 60. 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.

40. [17-20494-E-13](#)      **THOMAS/COZETTE CRAVENS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mary Ellen Terranella**                      **4-26-19 [78]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 26, 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 denied without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Thomas Nicklas Cravens and Cozette Dee Cravens (“Debtor”), are \$5,505.00 delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 15, 2019 explaining Debtor Thomas Nicklas Cravens lost his job in November 2018 resulting in the delinquency in plan payments. Dckt. 82. Debtor states a modified plan will be filed prior to the date of the hearing.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on May 24, 2019. Dckt. 84, 86. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 88. 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. [18-25962-E-13](#) **LEONARDO/FELY MERCURIO** **CONTINUED MOTION TO DISMISS**  
[DPC-3](#) **Pro Se** **CASE**  
**2-20-19 [49]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Hearing Required.

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 20, 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 hearing on the Motion to Dismiss is continued to June 19, 2019 at 10:00 a.m.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Leonardo Merced Mercurio and Fely Duyanan Mercurio (“Debtor”), have not filed and set for confirmation hearing a new plan since the Trustee’s Objection To Confirmation was sustained December 4, 2018.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on March 6, 2019. Dckt. 53. Debtor states there was confusion after the last hearing, with Debtor believing Debtor was advised the plan was adequate and the Trustee would communicate and further issues.

Debtor filed an Amended Plan and requests the court schedule a confirmation hearing after the Trustee has had an opportunity to review the plan.

#### **MARCH 20, 2019 HEARING**

At the March 20, 2019 hearing the court reviewed the Debtor’s Amended Plan, stating the following:

Debtor filed an Amended Plan on March 6, 2019. Dckt. 55. No motion was filed setting the Plan for confirmation hearing, and no evidence was filed with the Amended Plan.

The First Amended Plan steps up plan payments from \$641.67 to \$2,741.67. The plan further increases the unsecured dividend to 3 percent of the \$239,000.00 in unsecured claims. No changes to the Class 1 payments were made.

A review of the court's files reflect that this is Debtor's third recent bankruptcy case. A summary of the two prior cases follows:

- A. Chapter 13 Case 18-25067, In *Pro Se*
  - 1. Filed.....August 13, 2018
  - 2. Dismissed.....September 12, 2018
    - a. Dismissed due to failure of Debtor to serve Chapter 13 Plan and set Motion to confirm for hearing. 18-25607;l Dckts. 21, 22.
  
- B. Chapter 13 Case 16-27089, In *Pro Se*
  - 1. Filed.....October 25, 2016
  - 2. Dismissed.....February 1, 2017
    - a. Dismissed due to failure of Debtor to pay filing fees. 16-27089; Dckts. 44, 46.
  - 3. Court sustained objection to confirmation filed by Wells Fargo Bank, N.A. based no failure of plan to provide for curing the arrearage on its secured claim. Dckts. 34, 37. Denial of confirmation was also based on multiple grounds advanced by the Chapter 13 Trustee. Dckts. 33, 38.

Civil Minutes, Dckt. 56.

The court continued the hearing on the Motion to allow Debtor to obtain bankruptcy counsel.

## **DEBTOR'S RESPONSE**

Debtor, through proposed counsel Chad Johnson, filed a Response on May 22, 2019. Dckt. 58. The Response states a Substitution of Attorney should be filed prior to the date of the hearing on this Motion seeking to employ the Bankruptcy Law Group, PC, as counsel of record in this case.

The Response states further that proposed counsel's opinion is that the current case can be salvaged, though he petition and many of the schedules will need to be amended in conjunction with the filing of an Amended Plan and Motion to Confirm.

Debtor requests the hearing on the Motion be continued to June 19, 2019 at 10:00 a.m. to allow the substitution of counsel and filing of amended documents.

## **DISCUSSION**

Based on Debtor appearing to be actively prosecuting the case, the court shall continue the hearing on the Motion to June 19, 2019 at 10:00 a.m.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to June 19, 2019 at 10:00 a.m.

42. [18-26477-E-13](#)  
[DPC-3](#)

JEANNE RENNERT  
Jeffrey Meisner

MOTION TO DISMISS CASE  
5-1-19 [63]

**Final Ruling:** No appearance at the May 29, 2019 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 May 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Jeanne C Rennert (“Debtor”), is \$805.02 delinquent in plan payments.

#### DISCUSSION

Debtor is \$805.02 delinquent in plan payments, which represents multiple months of the \$268.34 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 May 29, 2019 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 May 1, 2019 <sup>FN.1</sup>. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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FN.1. An Amended Motion and Notice was filed on May 2, 2019. Such would provide only 27 days’ notice to the debtor and other parties in interest.

In reviewing the Amended Motion, the only change made was to provide the correct date—the original Motion stated April 29, 2019 and not May 29, 2019. To the extent it can be argued only 27 days’ notice was provided, the court finds the notice given in the circumstances here was sufficient.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Catherine Lee Cook (“Debtor”), is \$4,620.04 delinquent in plan payments.

#### DISCUSSION

Debtor is \$4,620.04 delinquent in plan payments, which represents multiple months of the \$2,310.79 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 May 29, 2019 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 April 23, 2019. By the court’s calculation, 36 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, Lee Ann Newton (“Debtor”), is \$4,355.99 delinquent in plan payments.
2. The court denied the Debtor’s Motion To Confirm on January 15, 2019 and Debtor has not proposed a new Amended Plan.

#### DISCUSSION

Debtor is \$4,355.99 delinquent in plan payments, which represents multiple months of the \$2,724.30 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor 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 15, 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 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.

45. [19-20751-E-13](#)  
[DPC-1](#)

SUANNE BLEDSOE  
Mikalsh Liviakis

MOTION TO DISMISS CASE  
5-1-19 [27]

**Final Ruling:** No appearance at the May 29, 2019 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 May 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Suanne Lynette Bledsoe (“Debtor”), is \$680.00 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$680.00 delinquent in plan payments, which represents multiple months of the \$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 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.

46. [18-22133-E-13](#)      **DONAVAN HAN**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Ryan Keenan**                      **4-29-19 [44]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 29, 2019. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Donovan Chim Han (“Debtor”), is \$1,060.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$1,060.00 delinquent in plan payments, which represents multiple months of the \$530.00 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.

47. [18-27634-E-13](#)      **LESLIE CREED**  
[DPC-1](#)                      **Ronald Holland**

**MOTION TO DISMISS CASE**  
**4-25-19 [26]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 25, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Leslie Ann Creed (“Debtor”), is \$10,519.25 delinquent in plan payments.

**DISCUSSION**

Debtor is \$10,519.25 delinquent in plan payments, which represents multiple months of the \$6,011.00 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.

48. [17-26126-E-13](#)      **WILLIAM/NICOLE NYE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Seth Hanson**                      **5-1-19 [21]**

**Final Ruling:** No appearance at the May 29, 2019 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 May 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, William Joseph Nye and Nicole Angela Nye (“Debtor”), is \$7,875.00 delinquent in plan

payments.

## **DISCUSSION**

Debtor is \$7,875.00 delinquent in plan payments, which represents multiple months of the \$2,625.00 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.

49. [17-20709-E-13](#)  
[DPC-1](#)

**FRANK FERREIRA**  
**Marc Caraska**

**MOTION TO DISMISS CASE**  
**4-26-19 [42]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 26, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Frank Vincent Ferreira (“Debtor”), is \$948.08 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$948.08 delinquent in plan payments, which represents multiple months of the \$474.04 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.

50. [18-26203-E-13](#)      CATHERINE PORTER      MOTION TO DISMISS CASE  
[DPC-3](#)                      Pater Macaluso                      4-23-19 [91]

**Final Ruling:** No appearance at the May 29, 2019 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 April 23, 2019. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

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

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

that the debtor, Catherine Ann Porter (“Debtor”), is \$1,130.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$1,130.00 delinquent in plan payments, which represents multiple months of the \$565.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on March 26, 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.

51. [19-21951](#)-E-13 JASMINE SMITH  
Scott Shumaker

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-3-19 [40]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 5, 2019. The court computes that 24 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 April 29, 2019.

**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.

52. [19-20660](#)-E-13      **DAVID MANNING**  
   **Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**5-10-19 [45]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 12, 2019. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 6, 2019.

**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.

53. [19-20751](#)-E-13 SUANNE BLEDSOE  
Mikalah Liviakis

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-17-19 [24]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 19, 2019. 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: \$76.00 due on April 12, 2019.

**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.

54. [18-27651](#)-E-13 VIVIAN TOLIVER  
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-15-19 [32]**

**Final Ruling:** No appearance at the May 29, 2019 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 April 17, 2019. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on April 11, 2019.

**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.

55. [19-22037-E-13](#) **PETE GARCIA**  
**Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**5-7-19 [24]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 9, 2019. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on May 2, 2019.

**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.

56. [19-21105-E-13](#)      **RAYMOND/HOPE HANNEMANN**      **ORDER TO SHOW CAUSE - FAILURE**  
**Muoi Chea**      **TO PAY FEES**  
**5-2-19 [20]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor , Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 4, 2019. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on April 29, 2019.

**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.



57. [19-20132-E-13](#) **ORLANDO CISNEROS**  
**Justin Kuney**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**4-15-19 [36]**

**DEBTOR DISMISSED: 4/26/2019**

**Final Ruling:** No appearance at the May 29, 2019 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 April 17, 2019. The court computes that 42 days' notice has been provided.

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

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on April 26, 2019 (Dckt. 39), 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.

58. [16-24907-E-13](#) MARY AIKEN  
[DPC-1](#) Seth Hanson

MOTION TO DISMISS CASE  
4-26-19 [41]

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 17, 2019, Dckt. 47; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Mary Terlaje Aiken (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice, and the Bankruptcy Case shall proceed in this Court.

59. [17-27308-E-13](#)      MARLA TAKEHARA      MOTION TO DISMISS CASE  
[DPC-1](#)                      George Burke                      5-1-19 [21]  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the May 29, 2019 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 was dismissed without prejudice, and the matter is removed from the calendar.**

60. [15-21635-E-13](#)  
[DPC-1](#)

**JEANNE JACKSON**  
**Michael Benavides**

**MOTION TO DISMISS CASE**  
**4-26-19 [36]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 17, 2019, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Jeanne Luanna Jackson (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice, and the Bankruptcy Case shall proceed in this Court.

61. [17-26035-E-13](#)      RUSSELL/PATRICIA CARLSEN      MOTION TO DISMISS CASE  
[DPC-3](#)                      Seth Hanson                      4-29-19 [35]

**Final Ruling: No appearance at the May 29, 2019 hearing is required.**  
-----

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 10, 2019, Dckt. 41; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Russell Thornton Carlsen and Patricia Jean Carlsen (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 41, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

62. [18-23050](#)-E-13      **CYNTHIA CUSHING**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Matthew Gilbert**      **4-5-19 [21]**

**Final Ruling:** No appearance at the May 29, 2019 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 was dismissed without prejudice, and the matter is removed from the calendar.**

63. [15-23258](#)-E-13      **MOSES/PATRICIA MERCADO**      **MOTION TO DISMISS CASE**  
[DPC-5](#)      **Chad Johnson**      **4-29-19 [94]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 17, 2019, Dckt. 101; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Moses J Mercado and Patricia A Mercado (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 101, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice, and the Bankruptcy Case shall proceed in this Court.

64. [16-22887-E-13](#)      **RANDALL OWENS AND RYAN**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **WATERS**                                      **4-29-19 [64]**  
                                    **Peter Macaluso**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 20, 2019, Dckt. 70; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Randall Dean Owens and Ryan Dale Waters (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 70, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice and the bankruptcy case shall proceed in this court..

65. [14-25688](#)-E-13      MIGUEL/DANIELLE SANCHEZ      MOTION TO DISMISS CASE  
[DPC-2](#)                      Peter Macaluso                      4-26-19 [[34](#)]  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.

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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 was dismissed without prejudice, and the matter is removed from the calendar.**



66. [15-20795-E-13](#)      **ROBERT/BARBARA KNEISE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Matthew Gilbert**                      **4-26-19 [19]**

**Final Ruling:** No appearance at the May 29, 2019 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 was dismissed without prejudice, and the matter is removed from the calendar.**

67. [16-25370-E-13](#)      **LINDSEY HOPKINS**                      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mark Shmorgan**                      **4-26-19 [20]**

**Final Ruling:** No appearance at the May 29, 2019 hearing is required.  
-----

**The Motion To Dismiss is dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 17, 2019, Dckt. 27; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Lindsey Hopkins (“Debtor”); the Ex Parte Motion is granted, 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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, 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. 27, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion To Dismiss is dismissed without prejudice, and the Bankruptcy Case shall proceed in this Court.