

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**September 23, 2020 at 9:00 a.m.**

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1. [20-20803-E-13](#) LYNN WEST MOTION TO DISMISS CASE  
[DPC-2](#) Peter Cianchetta 7-22-20 [37]

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 22, 2020. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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. Debtor is delinquent in plan payments.
2. Debtor has failed to file and confirm a plan.

**DISCUSSION**

**Delinquent**

Debtor is \$762.50 delinquent in plan payments, which represents half of one month payment of the \$1,525.00 plan payment. Before the hearing, additional plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**Prior Plan Denied, No New Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on June 2, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**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 August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on September 8, 2020. Dckt. 32. Debtor states that the delinquency has been cured with Trustee having received payments in the amount of \$19,200 by September 4, 2020.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$8,749.16 delinquent in plan payments, which represents multiple months of the \$4,374.58 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, ~~XXXXXX~~

The Motion is ~~XXXXX~~.

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.



payments which represents multiple months of Debtor's \$175.00 monthly payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 11, 2020. Dckt. 37. In the Opposition Debtor requests a 60 day continuance to become current.

Debtor also filed a Notice of COVID-19 Impact on June 16, 2020. Dckt. 39. In the Notice Debtor requests the parties in interest not take action on Debtor's delinquency due to the COVID pandemic.

## **DISCUSSION**

While the court is aware of the COVID-19 pandemic and its effects, Debtor's counsel has not explained what Debtor's game plan is, whether it is continuing this hearing to allow Debtor to become current, or file a modified plan, or something else.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

### **September 23, 2020 Hearing**

As of the date of the court's preparation of this tentative ruling, no new plan has been filed. No other documents updating the court regarding Debtor's intentions in prosecuting this case have been filed.

Debtor's confirmed Chapter 13 Plan requires a monthly plan payment of \$175. Plan, ¶ 1.01; Dckt. 5. The first 24 months of payments will be to fund payment of Debtor's counsel's fees, with an \$80 a month payment for the credit union having a lien on Debtor's vehicle, and then when Debtor's counsel has been paid his fees, the payment on the secured claim jumps up to \$165 a month. Plan, Additional Provisions, *Id.*

On Schedule I, Debtors states having \$1,169 a month in Social Security Income and \$669 a month in pension/retirement income (which is identified as a "PERS" pension on the Schedules). Dckt 1 at 25-26. Debtor's Plan is based on this projected Social Security and Pension income.

To pull off this Plan (which was confirmed without a hearing), Debtor has a very tight expense budget. Schedule J, Dckt. 1 at 27-28.

In his Declaration filed in opposition to the Motion to Dismiss, Debtor explains that he has lost some additional income.

3. I was employed by Ridgecrest Residential, Shasta Lake, CA 96019 until April 2019 when I was laid off. My employer advised me I could not obtain unemployment compensation since I was a part-time employee. This was false. I

was approved for unemployment in early May and should receive my payment plus \$600.00 (federal benefit) this month.

Declaration, ¶ 3; Dckt. 40.

Considering the above, the Chapter 13 Plan has been confirmed and then prosecuted based upon inaccurate financial information. Debtor's income has been higher than stated under penalty of perjury on Schedule I. Debtor has been working and obtaining additional income.

Debtor requested in June 2020 that the court continue the June 2020 hearing because, although he had lost the previously unreported additional income due to being laid off from his part-time job, he successfully applied for and should begin receiving his unemployment, plus the additional \$600 a month federal COVID-19 enhancement in June 2020.

Debtor's Chapter 13 Plan exists for Debtor to pay his bankruptcy attorney's fees and reamortize the debt secured by his car. No other creditors are paid. This is not a complex home mortgage arrearage case in which there is a debtor trying to protect a substantial homestead exempt equity in a home.

In reality, being laid off and getting the unemployment compensation and the COVID-19 \$600 a month enhancement, Debtor could keep his plan on track, or possibly even accelerate his plan, finish it in less than 60 months, and pay less in Chapter 13 Trustee fees.

Debtor has not acted to prosecute this case, and has not provided the court with a basis for this court to allow this case to "exist" with further non-performance of the confirmed plan or good faith prosecution of a proposed modified plan.

Cause exists to terminate this case. The Motion is granted, and the Chapter 13 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 Dismissed 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 is granted, and the Chapter 13 Case is dismissed.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 24, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

Debtor filed a Response on September 9, 2020. Dckt. 58. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$2,484.83 delinquent in plan payments, which represents multiple months of the \$918.46 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay is not evidence that solves this Motion.

At the hearing, **XXXXXXXXXX**

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



1. The debtor, Richard Lee De Rosa (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file a new plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$14,200.00 delinquent in plan payments, which represents multiple months of the \$6,850.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on April 2, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee concurred with the Debtor in requesting a continuance of the hearing in light of the Debtor prosecuting a refinance which will resolve the defaults.

### **Motion to Approve Loan Modification**

On June 30, 2020, Specialized Loan Servicing, LLC filed a Motion to Approve Loan Modification. Dckt. 43. The Motion was granted on August 25, 2020. Dckt. 74.

Debtor seems to be prosecuting this case.

### **September 23, 2020 Hearing**

As of the court’s review of file on September 20, 2020, no modified plan had been filed by Debtor. The court does see an Objection to the Claim of the Internal Revenue Service filed by Debtor on September 17, 2020. Dckt. 80. Debtor’s Opposition is that the Internal Revenue Service has confirmed in writing that its claim for 2015 taxes is \$19,056.26, and not the \$81,941.26 stated in Proof of Claim No. 2 filed by the Internal Revenue Service. Objection and Declaration, Dckts. 80, 82.

A copy of the Internal Revenue Service letter is filed as Exhibit B in support of the Objection. Dckt. 84 at 11-12. The Letter is dated April 20, 2020 and shows a decrease in the amount previously computed from \$113,195.49 to \$19,056.26, with the lesser amount stated to be “Amount due by May 11, 2020.”

Proof of Claim No. 2-1 filed on February 11, 2020, states that \$552,563.28 is owed to the Internal Revenue Service by Debtor. For the 2015 priority taxes, \$81,941.85 is stated as owed on the attachment to Proof of Claim No. 2-1.

At the August 25, 2020 hearing for the Motion to Confirm the First Amended Plan, the court

noted that Debtor obtaining the loan modification to preserve his residence, his monthly projected disposable income drops to \$3,908.73 a month (the modified loan moving to being paid by Debtor as a Class 4 claim).

The proposed First Amended Plan requires Class 2 secured claim payments for taxes, with 0.00% interest, of \$4,975.00. First Mod. Plan, ¶ 3.08, Class 2 A; Dckt. 60 at 4. Additionally, Debtor identifies \$50,000.00 in unsecured priority tax claims, which over sixty months is an additional \$833.33 a month in plan payments. *Id.*, ¶ 3.12. Taking Debtor's proposed First Amended Plan at face value, when the 10% Chapter 13 Trustee fee is added, Debtor would need to fund the Plan with monthly payments of \$6,388.80 - well in excess of the monthly projected disposable income of \$3,908.73. <sup>FN. 1</sup>

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FN. 1. Even after adjusting the 2015 taxes as objected to by Debtor, the Internal Revenue Service Proof of Claim No. 2-1, the Internal Revenue Service priority unsecured claim is \$175,000 (which would require an additional plan payment of \$2,916 over the sixty months of a Chapter 13 Plan).  
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Putting the funding of the Plan in context, Debtor provides his statement of income on Schedule I under penalty of perjury that his monthly gross income from his business is \$8,500 a month. Dckt. 11 at 22-23. No deductions or payments for self-employment or income taxes are shown on Schedule I.

On Schedule J Debtor, under penalty of perjury does not list any self-employment or state or federal income taxes on his \$8,500.00 of monthly income from his business. *Id.* at 25-26. Further, though having \$8,500.00 of monthly income, Debtor pays no health insurance or vehicle insurance.

On Schedule A/B Debtor states owning a 2013 Chevrolet Silverado 3500 Crew Cab. *Id.* at 4. However, on Schedule J Debtor pays no insurance on this vehicle, and states having a monthly transportation expense (repair, maintenance, fuel and registration) of \$300.00 a month.

Interestingly, Debtor discloses owning West Coast Construction & Development, Inc. (which is not stated on Schedule I as being an employer who pays Debtor wages or commissions), has "a lease on a 2017 Rerrari California T Convertible which is used to promote Debtor's current business). Schedule A/B, Question 19; *Id.* at 5.

An internet search does not turn up there being any vehicle that is a "Rerrari." However, the court did locate a vehicle stated to be a Ferrari California T Convertible. Going to Kelly Blue Book's online service, it provides the following information about how much a used 2017 Ferrari California costs:

### **How Much Does the Used 2017 Ferrari California Cost?**

With a Manufacturer's Suggested Retail Price (MSRP) of \$198,973 and a delivery charge of \$3,750, **the 2017 Ferrari California T costs \$202,723.** Good luck, however, finding one at that price. In actuality, **most California T models leave the showroom highly personalized and priced much closer to \$300,000.** And at that price, competitors such as the Aston Martin DB9 Volante, Audi R8 Spyder, Maserati GranTurismo and Mercedes-Benz SL begin looking more attractive. But

there's one point to remember: The 2017 California T has an impressive plan that covers all regular maintenance for the first seven years of the car's life. This will help keep the Ferrari in top mechanical condition, and do wonders for its resale value. As always, check the Kelley Blue Book Fair Purchase Price to see what others in your area are paying for their Ferrari.

<https://www.kbb.com/ferrari/california/>. Debtor, whose financial distresses and hundreds of dollars of unpaid state and federal taxes, does disclose that his company does provide him with a \$300,000.00 car to drive around in. This would appear to be significant additional compensation that Debtor is receiving.

The corporation owned by Debtor that leases the Ferrari for Debtor is West Coast Construction and Development, Inc. Going to the California Secretary of State's webpage and using the business search service, the Secretary of State reports that West Coast Construction and Development, Inc. has had its corporation powers suspended:

C2338211 WEST COAST CONSTRUCTION AND DEVELOPMENT, INC.

Registration Date: 04/05/2001

Jurisdiction: CALIFORNIA

Entity Type: DOMESTIC STOCK

Status: FTB SUSPENDED

Agent for Service of Process: RICHARD DE ROSA  
[service address is Debtor's personal residence]

Entity Address: [Same as Debtor's Personal Residence]

Entity Mailing Address: [Same as Debtor's Personal Residence]

<https://businesssearch.sos.ca.gov/CBS/Detail>. The court does not take this as "evidence" that the corporation is suspended, but discloses the information to insure that counsel is aware of what the Secretary of State is saying and can make sure that the purported operation of a business in California is the legal operation of such business.

While stating that he owns West Coast Construction and Development, Inc., and that the suspended corporation is renting a Ferrari for Debtor, on Schedule I states that he is the owner of a business named "West Coast Pim Testing," which is located at Debtor's residence. It appears that this is Debtor's dba.<sup>FN. 2</sup>

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FN. 2. In Debtor's prior bankruptcy case, No. 19-25836 filed on September 17, 2019 and dismissed on January 16, 2020, Debtor states under penalty of perjury that West Coast Pim Testing is a dba for his (suspended) corporation West Coast Construction and Development, Inc., and that the Ferrari is parked at events to attract new clients. 19-25836; Schedule A/B, Question 19, Dckt. 26 at 7.  
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On the Statement of Financial Affairs Debtor states that his income from operating a business - and not from wages or commissions in 2020, 2019, and 2018. Stmt. of Fin. Affairs, Quest 4; Dckt. 11 at 27-28. In response to Question 27 on the Statement of Financial Affairs requiring Debtor to give detail about his business, he states that he ha own a business called West Coast Pim Testing since 2015, but fails to disclose whether it is a sole proprietorship, limited liability company or partnership, corporation for which he is an officer or director, or if he is a shareholder if it is a corporation.

### **Dismissal of Case**

It is now the thirteenth month since Debtor has been obtaining bankruptcy relief under Chapter 13 (his prior case filed on September 17, 2019 and dismissed January 16, 2020, just four days before he filed the present case). Debtor has been unable to confirm a Chapter 13 Plan.

In the current case, Debtor has tried to advance a plan, with such efforts demonstrating that his financial information does not support confirmation. Now, having obtained a loan modification to save his residence, if his income information is correct, he cannot fund a plan to pay his other secured debts to the Internal Revenue Service and California Franchise Tax Board and his priority tax claims.

Debtor's financial information is suspect in that he makes no provision on paying any self-employment or income taxes on his almost \$9,000 a month in net income. Further, it is not clear if debtor is self-employed, as stated on Schedule I or an employee of a company he owns. Either way, no provision is made for paying or withholding any income taxes.

While Debtor has filed an objection to the Internal Revenue Service claim to bring the 2015 year of tax defaults (there being apparently undisputed tax defaults in Proof of Claim No. 2-1 for tax years 2011, 2013, 2014, 2016, 2017, 2018, and 2019), it appears that prosecuting an objection to claim is an academic exercise, for which the exercise of federal court bankruptcy jurisdiction would not be warranted.

Debtor is in substantial monetary defaults to the Chapter 13 Trustee. Debtor is not prosecuting a plan in this case.

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

The court shall issue 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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 22, 2020. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

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

**DISCUSSION**

Debtor filed a Motion to Confirm the Amended Plan on August 17, 2020. Dckt. 43. The Motion was set for hearing for September 15, 2020. *Id.* Debtor’s Motion to Confirm the Amended Plan was granted, and the Amended Plan was confirmed on September 15, 2020. Dckt. 50.

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.

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$14,913.20 delinquent in plan payments, which represents multiple months of the \$2,504.16 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).

This case having been filed in 2017, the court has reviewed the file to see if there was any active prosecution taking place. The last affirmative relief sought by Debtor and Debtor's counsel in this case was the March 17, 2017 Motion to Extend the Automatic Stay as provided in 11 U.S.C. § 362(c)(3)(B). The hearing on the Motion to Extend the Stay was conducted on April 4, 2017. No appearance was made by Debtor or Debtor's counsel at the hearing. Civil Minutes, Dckt. 21. The Motion was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2), for which opposition could have been presented orally at the hearing.

In 2018, Debtor filed an opposition to the Trustee's Motion to Dismiss based on an asserted \$2,500 default in plan payments. Debtor's counsel argued (there being no declaration by Debtor filed) that Debtor "reports" she became confused as to the amount due. Opposition, Dckt. 46.

Now, after having paid \$90,386.73 into the Plan and there being a \$14,913.20 delinquency offers no opposition to the present Motion. Debtor and those who owe duties to Debtor appear satisfied with the dismissal of this case.

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

The court shall issue 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.

[17-27411-E-13](#)  
[DPC-1](#)

STACEY BASE  
Mikalah Liviakis

CONTINUED MOTION TO DISMISS  
CASE  
6-3-20 [\[17\]](#)

**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 June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Stacey Ann Base ("Debtor"), is \$7,288.67 delinquent with a monthly payment of \$1,982.69.

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

Debtor filed a Response on June 18, 2020, indicating the Debtor fell delinquent due to increased expenses, but will have enough to cure the delinquency by the hearing date.

#### **DISCUSSION**

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

Debtor has cured all but one payment, and the Trustee agrees to a continuance.

#### **September 23, 2020 Hearing**

At the hearing, ~~XXXXXX~~

**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 August 21, 2020. 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 Debtors is delinquent in plan payments.

**DEBTORS’ RESPONSE**

Debtors filed a Response on September 9, 2020. Dckt. 185. Debtors state the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtors are \$810.23 delinquent in plan payments, which represents multiple months of the \$345.00 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, a promise to pay is not evidence that resolves this 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:



## DISCUSSION

### Delinquent

Debtor is \$6,890.15 delinquent in plan payments, with monthly plan payments of \$2,308.03. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The COVID-19 pandemic has created unprecedented circumstances that require Debtor to navigate uncertainties and frequently changing health directives. Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning her finances and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

Debtor and Debtor's Counsel explained at the hearing how they are diligently prosecuting the case.

### TRUSTEE'S STATUS REPORT

Trustee filed a Status Report informing the court that although Debtor has been making payments toward curing the default, Debtor's payments are not consistent. Dckt. 49. Debtor is currently delinquent \$3,098.18, which is less than two plan payments, and has paid a total of \$17,674.09 into the Plan to date. Trustee requests the court grant his Motion to Dismiss.

### September 23, 2020 Hearing

At the hearing, **XXXXX**

~~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.~~

11. [20-22315-E-13](#) **HEIDI ADCOCK ARASOMWAN** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Chinonye Ugorji** **8-24-20 [24]**

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

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Local Rule 9014-1(f)(1) Motion—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 August 24, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed opposition. 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 Debtor has failed to file and confirm an amended plan.

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

Debtor filed an Amended Plan and Motion to Confirm on September 7, 2020. Dckt. 34, 31. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 33. 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.

12. [18-21317-E-13](#)      **AMBER HORTON**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Gabriel Liberman**                      **8-21-20 [44]**

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on September 9, 2020. Dckt. 48. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtor is \$3,300.00 delinquent in plan payments, which represents multiple months of the \$825.00 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 this 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. [18-22318-E-13](#) **MANUEL/YESENIA GUZMAN** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mark Hannon** **8-21-20 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 ~~XXXXX~~.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtors’ Plan will not complete within the 36 months proposed

## **DISCUSSION**

### **Material Default for Breaching a Plan Term**

Debtor is in material default under the Plan because the plan will complete within 47 months instead of the 36 months proposed by Debtors’ Plan. Section 6.04 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims puts Debtor in material default of the confirmed

Plan. *See* 11 U.S.C. § 1307(c).

Debtor has filed an Opposition, requesting that the court continue the hearing to October 27, 2020, when the Debtor intends to have a hearing on a motion to confirm a modified plan, which plan and motion have not yet been filed.

On September 16, 2020, the court signed the substitution of counsel, substituting Mark Hannon, Esq., as counsel for Debtor's in place of their former counsel who is not currently practicing law in California.

At the hearing, ~~XXXXXXXXXX~~

~~Unfortunately for Debtor, a promise to file a new plan is not evidence that resolves this 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.~~

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Hector Arnaldo Cavazos (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on June 17, 2020. Dckt. 112. Debtor’s counsel states he has been unable to meet with Debtor due to the COVID-19 pandemic and requests additional time to meet with Debtor.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$10,850.00 delinquent in plan payments, with a monthly plan payment of \$4,850.00. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court understands that the COVID-19 pandemic has significantly disrupted attorney work and access to clients. Counsel requests additional time to meet with Debtor.

Debtor’s counsel has filed an opposition identifying the COVID-19 issues that have impaired the ability of Debtor and counsel to consider possible modifications in this case for the confirmed plan. Given the Debtor’s prosecution of this case (there being a confirmed plan that now needs to be modified), a continuance of this hearing is warranted.

#### **September 23, 2020 Hearing**

At the hearing, ~~XXXXXX~~

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 20, 2020. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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 Debtors failed to file and confirm an Amended Plan.

#### **DEBTORS' OPPOSITION**

Debtors filed an Opposition on September 9, 2020. Dckt. 55. Creditor Leonel Cortez recorded two abstracts against Debtors' residence and commercial property. Debtors were working on obtaining appraisals in order to avoid the liens but were delayed until April and May due to COVID-19 and environmental reports affecting the commercial property. This also delayed discovery requests Creditor made until May 2020 when Debtors were able to forward the appraisals to Creditor.

Debtors are also hoping to settle two Motions to Avoid Judicial Liens with Creditor Cach, LLC and Leonel Cortez, Jr. on the commercial property. Addressing Creditor Cortez's claim is necessary before Debtors can file an amended plan. The hearings for the two Motions to Avoid Judicial Liens have been set for October 20, 2020.

Debtors assert that they have continued making payments and are current, with only the judgment lien to be resolved. Once these matters are resolved, Debtors will file an amended plan. Lastly, Debtors request that the hearing on the motion be continued to October 20, 2020, the same day as the hearings for the two Motions to Avoid Judicial Liens.

**DISCUSSION**

**Prior Plan Denied, No New Plan**

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

At the hearing, **XXXXXX**

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 24, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

Debtor filed an Opposition on September 9, 2020. Dckt. 30. Debtor states the delinquency will be cured prior to the hearing date. Debtor made reduced payments in March through August of 2020 as Debtor's non-filing spouse's income was reduced by 10% during this time. Debtor intends to sell the home located in Cameron Park, CA and file a modified plan prior to the hearing.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$5,163.36 delinquent in plan payments, which represents multiple months of the \$2,095.28 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 this 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

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

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on June 4, 2020. Dckt. 61. Debtor states the delinquency was due to a slower business quarter because of the COVID-19 pandemic. As business has increased and stimulus funds have been received, Debtor anticipates the delinquency will be cured by the hearing date.

#### **DISCUSSION**

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

A promise to file a new plan or pay is not evidence that resolves the Motion, . However, given the Debtor’s prosecution of this case (there being a confirmed plan that now needs to be modified or payments cured), the financial uncertainty concerning employment, and Debtor’s clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

#### **September 23, 2020 Hearing**

At the hearing, ~~XXXXXXXX~~

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

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

Debtor filed an Opposition on September 8, 2020. Dckt. 82. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$1,594.00 delinquent in plan payments, which represents multiple months of the \$326.00 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 this 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. [19-26529-E-13](#)      **PAUL WILSON AND JESSICA**      **CONTINUED MOTION TO DISMISS**  
[DPC-2](#)                      **MAINVOILLE-WILSON**                      **CASE**  
   **Matthew DeCaminada**                      **7-6-20 [44]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 1, 2020. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtors are delinquent in plan payments and have failed to file a new plan.

**DEBTOR’S OPPOSITION**

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,708.16 delinquent in plan payments, with monthly plan payments of \$1,738.52. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Pending Plan**

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

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

At the hearing, Debtor reported that the claim objection has been filed and the plan, with a motion to confirm will be filed shortly. The Trustee agreed to a continuance.

### **DEBTOR'S OBJECTION TO CLAIM**

Debtor's Objection to Claim of The Bank of New York Mellon was heard on September 15, 2020. Dckt. 50. The hearing on the Objection was continued to October 20, 2020 at 2:00 p.m. to allow the parties to conduct discovery. Civil Minutes, Dckt. 69.

### **TRUSTEE'S STATUS REPORT**

On September 16, 2020 filed a Status Report informing the court that Debtor remains delinquent because although Debtor has been making payments they are not for the adjusted amount called for in order to account for the higher mortgage payment.

### **September 23, 2020 Hearing**

At the hearing, **xxxxxx**

**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 August 21, 2020. 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 Debtors are delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on September 9, 2020. Dckt. 102. Debtors have been unable to make plan payments due to Debtor Paul’s asphalt business having lost income after he was unable to collect payments from customers and did not have access to job sites. Debtors intend to file a modified plan to bring trustee payments current and have also requested a loan modification package and intends to file a motion to approve trial period payments.

#### **DISCUSSION**

##### **Delinquent**

Debtors are \$20,049.25 delinquent in plan payments, which represents multiple months of the \$3,989.85 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.

21. [17-25133-E-13](#)      **EVELYN GUTIERREZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mikalah Liviakis**                      **8-21-20 [24]**

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

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Local Rule 9014-1(f)(1) Motion—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 August 21, 2020. 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 Debtor is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on September 6, 2020. Dckt. 28. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,325.00 delinquent in plan payments, which represents multiple months of the \$375.00 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.

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtor is delinquent in plan payments and has failed to file a new plan.

#### **DEBTOR’S OPPOSITION**

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

#### **TRUSTEE’S REPLY**

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

- A. Debtor needs to appear at the hearing and explain to the court how she will correct the problems with her bankruptcy.

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

*Id.*, at ¶ 2.

## **DISCUSSION**

### **Delinquent**

Debtor is \$230.00 delinquent in plan payments, which represents less than one month of the \$240.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 11, 2020, Dckt. 37. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

It is clear that Debtor has some substantial assets, including the \$100,000+ equity in the real

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

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

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

At the hearing, Debtor appeared and expressed an understanding of the need to obtain counsel. Trustee agreed to a continuance.

### **TRUSTEE'S STATUS REPORT**

Trustee filed a Status Report on September 16, 2020 pointing the court to Debtor's continued lack of filing and confirming an amended plan. Dckt. 61.

### **September 23, 2020 Hearing**

At the hearing, **xxxxxx**

**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 August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on September 9, 2020. Dckt. 24. Debtor asserts that they made a \$9,992 payment to Trustee via TFS Billpay and that the rest of the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtors are \$13,700 delinquent in plan payments, which represents multiple months of the \$6,000 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, ~~XXXXXX~~

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

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

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

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

24. [18-25851-E-13](#)      **ROBERT HUNTER**      **MOTION TO DISMISS CASE**  
[DPC-5](#)                      **Peter Macaluso**                      **8-21-20 [90]**

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on September 9, 2020. Dckt. 94. Debtor states that a modified plan will be filed and set for hearing prior to the instant Motion.

**DISCUSSION**

**Delinquent**

Debtor is \$12,379.73 delinquent in plan payments, which represents multiple months of the \$2,975.54 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.

25. [20-20656-E-13](#)      **MICHAEL KENNEDY**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Julius Cherry**                      **8-25-20 [32]**

**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 August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on September 8, 2020. Dckt. 36. Debtor testifies that he is current on plan payments and presents copies of two Cashier's Checks payable to Trustee dated August 28, 2020 and September 4, 2020. Dckt. 38; *see also* Exhibit A, Dckt. 37.

## **DISCUSSION**

### **Delinquent**

Trustee asserts that Debtor is \$3,832.35 delinquent in plan payments, which represents multiple months of the \$1,814.47 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's opposition states that Debtor is current in plan payments and presents evidence of payment. At the hearing, **xxxxxxx**

The Motion is **xxxxx**.

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

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

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

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

**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 August 24, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

Debtor filed an Opposition on September 9, 2020. Dckt. 53. Debtor notes that she will meet with counsel so as to propose a modified plan which will be filed and set for hearing before the hearing for this Motion.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$830.00 delinquent in plan payments, which represents multiple months of the \$215.00 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.

27. [20-20163-E-13](#) **OKHARINA HOLMES** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Candace Brooks** **8-25-20 [46]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on September 8, 2020. Dckt. 52. Debtor testifies that her employment was affected by COVID-19 and had unexpected expenses but that she sent a \$3,317.00 payment to Trustee on August 25, 2020, and will file and a motion to modify her plan prior to the hearing for this Motion.

## DISCUSSION

### Delinquent

Debtor is \$10,244.08 delinquent in plan payments, which represents multiple months of the \$3,409.77 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXX**

The Motion is **XXXXX**

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

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

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

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

**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 August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

#### **DEBTORS’ RESPONSE**

Debtors filed a Response on September 3, 2020. Dckt. 41. Debtors state they will file a Modified Plan prior to the hearing on this Motion.

#### **DISCUSSION**

##### **Delinquent**

Debtors are \$10,620.00 delinquent in plan payments, which represents multiple months of the \$2,655.00 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. [20-22066-E-13](#)      **GREGORY/CHERIE**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **BORGERSON**                      **8-20-20 [46]**  
                                    **Randall Ensminger**

**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 and Debtor’s Attorney, on August 20, 2020. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. Debtors do not have a pending plan.
2. Debtors are serial bankruptcy filers.

**DEBTORS’ OPPOSITION**

Debtors filed an Opposition on September 9, 2020. Dckt. 50. Debtors’ Opposition is discussed below.

## **DISCUSSION**

### **No Pending Plan**

Debtors did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 16, 2020. A review of the docket shows that Debtors have not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In their Opposition, Debtors explain that the filing of an Amended Plan has been delayed while Debtors await the filing by the IRS of an Amended Proof of Claim reducing the amount of past due taxes which Debtors argue they did file.

### **Serial Filer**

Trustee argues that Debtor is a serial filer with two prior cases (Case # 18-23460; and Case # 16-24598) under Chapter 13, which seem to be filed in attempts to keep their house but fail to obtain confirmation of a plan. Trustee contends that without Debtors agreeing to sell or surrender their house, confirmation of a plan in this case may be unlikely.

Debtors assert that they have completed their loan modification applications and are awaiting on responses from the lenders. Debtors believe that with their current improved income they will be able to make mortgage payments if they are provided loan modification relief on the arrearage.

### **Additional Provisions For Chapter 13 Plans**

Counsel for Debtors is not unfamiliar with the Additional Provisions section of the Chapter 13 plan form in this District. They can be used to address disputed claims that can be the subject of an objection. They may also be used, in a provision call The Ensminger Provision, to provide for the payment of adequate protection payments to a creditor while the debtor in good faith pursues a loan modification.

Here, Debtors filed a plan and had three objections to confirmation sustained against Debtors. Orders, Dckts. 43, 44, 45. That was in mid-July 2020.

Debtors appear to argue that it does not agree with the proof of claim filed by the Internal Revenue Service (some might say Debtors object to the amount stated therein) and that Debtor intends to pursue a loan modification; thus, Debtors are exempt from prosecuting and confirming a plan indefinitely.

At the hearing, **XXXXX**

The Motion to Dismiss is **XXXXX**

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

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

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

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

30. [18-24070-E-13](#)      **LAWANNA PARKER**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Mikalah Liviakis**                      **8-21-20 [39]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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.**

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

**DEBTOR’S RESPONSE**

Debtor filed a Response on September 7, 2020. Dckt. 43. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtor is \$1,447.01 delinquent in plan payments, which represents multiple months of the \$290.00 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.

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 2, 2020. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on August 24, 2020.

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

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

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

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

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

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

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on September 9, 2020. Dckt. 51. Debtor states that a Modified Plan will be filed and set for hearing prior to the hearing on the instant Motion.

Moreover, Debtor testifies that she has listed her home for sale and accepted an offer so that she may pay her bills and move out of state and help her family. Dckt. 52.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$4,481.90 delinquent in plan payments, which represents multiple months of the \$1,814.18 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).

Although a promise to file a modified plan is not evidence that resolves the Motion, Debtor shows that she is actively prosecuting this case by listing her home for sale. Additionally, an *Ex Parte* Motion to Employ a Realtor was filed on September 1, 2020. Dckt. 47. The court granted the Motion on September 8, 2020. *See* Order, Dckt. 50.



## **DISCUSSION**

### **Delinquent**

Debtor is \$4,900.00 delinquent in plan payments, which represents multiple months of the \$2,450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

### **Debtor's Supplemental Declaration**

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

### **August 5, 2020 Hearing**

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

At the hearing, Debtor's counsel reported that Debtor is awaiting his next paycheck to get the cure payments completed.

## **TRUSTEE'S STATUS REPORT**

On September 16, 2020, Trustee filed a Status Report indicating that although Debtor has made a payment in the amount of \$4,900.00, Debtor remains delinquent \$4,900 and no modified plan has been filed and set for hearing. As such Trustee requests that the Motion be granted.

### **September 23, 2020 Hearing**

At the hearing, **xxxxxxx**

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon

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

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

34. [17-20776-E-13](#)      **MARIO/ROWENA CHESNEY**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Seth Hanson**                      **8-21-20 [65]**

**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 August 21, 2020. 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 XXXXX.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the Debtors are delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtors filed an Opposition on September 9, 2020. Dckt. 69. Debtors testify that they encountered significant unexpected home repairs but that the delinquency will be cured prior to the hearing date. Dckt. 70. Debtors testify to having initiated payments to Trustee totaling \$14,300.00 and asserting that two separate payments totaling \$8,523.00 will be sent to the Trustee prior to the hearing. *Id.*

**DISCUSSION**

**Delinquent**

Debtors are \$13,505.82 delinquent in plan payments, which represents multiple months of the \$9,317.13 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).

Debtors having testified that payments have been sent to Trustee, at the hearing counsel for Trustee **XXXXX**.

Motion to Dismiss is **XXXXX**.

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

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

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

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

35.	<a href="#">14-30877-E-13</a> <a href="#">DPC-6</a>	TROY HARDIN Peter Macaluso	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> 7-18-19 [ <a href="#">186</a> ]
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**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 July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is <b>XXXXX</b>.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Troy Hardin (“Debtor”) is delinquent in plan payments.

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

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

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

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

## **DISCUSSION**

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

The Trustee concurred with the Debtor's request for a continuance in light of the plan being near completion and Debtor having new employment by which funding of the plan should be possible.

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

At the March 4, 2020 hearing, Debtor's counsel argued that this is a 100% plan, with Debtor's payments being delayed due to an injury. Debtor has a Worker's Comp claim that is pending.

The Trustee agreed to a continuance.

## **July 1, 2020 Hearing**

Debtor has not filed any supplemental pleadings updating the court as to the status of his situation.

At the hearing, Debtor's counsel reported that his Workers' Compensation claim is being delayed. The Trustee concurred with a continuance in light of the age of the case.

## **TRUSTEE'S STATUS REPORT**

On September 16, 2020, Trustee filed a Status Report indicating that Debtor has continuously failed at maintaining regular plan payments. Moreover, this motion has been continued four times since it was first filed in July 18, 2019. Yet, no modified plan has been filed by Debtor. Thus, Trustee requests the Motion be granted.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on September 17, 2020. Dckt. 207. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 206.

The proposed Modified Plan terms for plan payments by Debtor are that the plan payments through August 2020 total \$74,340.00, and that the Debtor will make payments of \$365.00 a month commencing September 2020 for an additional fifteen months.

This Chapter 13 bankruptcy case was filed on November 3, 2014. Debtor's Chapter 13 Plan was confirmed by an order filed on February 3, 2015. Dckt. 30. Payments under that confirmed plan commenced with the December 2014 payment. The sixtieth month of the plan was November 2019.

The Chapter 13 Plan was modified in March 2017. Order, Dckt. 137. The Plan was further modified in December 2017. Order, Dckt. 171.

The latest modification seeks to create a Chapter 13 plan that runs through December 2021, a seventy-five month Chapter 13 Plan.

The provisions of 11 U.S.C. § 1329(d) have been temporarily amended by the CARES Act to allow for a Chapter 13 plan that was confirmed prior to the enactment of the CARES Act to be extended out to a term of eighty-four months if necessary due to hardships caused by the COVID 19 pandemic. The Declaration in support of the Motion to Confirm expressly provides testimony of the hardships relating to the COVID 19 pandemic.

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.

### **September 23, 2020 Hearing**

At the hearing, **xxxxxxx**

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 **xxxxx**.

**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 June 1, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Dorothy Norma Miko ("Debtor"), failed to file an amended plan after Trustee's Objection to Confirmation was sustained and Debtor's Plan was denied on January 28, 2020.

## **DEBTOR'S OPPOSITION**

Trustee filed on June 18, 2020, a note received by Debtor (apparently prepared without the assistance of Debtor's counsel) which Trustee deemed an Opposition. Dckt. 37. Debtor describes having difficulty in pursuing a loan modification with Debtor's mortgage lender, and explains health issues and unexpected increased to income and decreases to income.

## **DISCUSSION**

Since the case was filed in November 2019, Debtor has filed one plan. The Trustee filed an Objection To Confirmation (Dckt. 19), which was sustained January 28, 2020. Dckt. 26.

Since then, nothing has really been done to prosecute the case.

At the July 1, 2020 hearing, Debtor's counsel reported the status of the case and lack of effective communication with his client.

The court continued the hearing, requiring the appearance of both the Debtor and Debtor's counsel, to address these issues, if possible, and allow the Debtor the opportunity to explain how this

Chapter 13 case will be prosecuted.

## **TRUSTEE'S STATUS REPORT**

Trustee filed a Status Report on September 8, 2020 pointing to the court that Debtor continues to fail to file and set for hearing a new plan since the instant Motion was continued from July 1, 2020. Dckt. 43. Moreover, Debtor is \$6,500 delinquent in plan payments. Thus, Trustee requests the court dismiss the case.

## **DEBTOR'S OPPOSITION**

Debtor's Counsel filed an Opposition and a Declaration meant to expand Debtor's *pro se* Opposition in order to inform the court of specific events affecting the current case. Dckt. 46. Debtor's Counsel testifies that Debtor is 93 years old and has recently been diagnosed with a terminal medical condition and has been told that she has six months to two years to live.

Counsel advised Debtor to convert the case to a Chapter 7 after the mortgage pre-petition arrearage came much higher than expected (\$78,723.89). Under this approach, Debtor would have to pursue a short sale in the hopes that the lender will allow her to remain in the residence until the property sells. However, Debtor has refused this approach as she does not want to lose her home and wishes to stay at the property.

Debtor has disposable income of two thousand five hundred forty-two and 94/100 dollars (\$2,542.94), however, sometimes the debtor does not receive her rental income in the amount of one thousand two hundred fifty dollars (\$1,250). Counsel believes the amount for monthly plan payments needed for Debtor to become current is not feasible. Absent a loan modification, there is no additional evidence to support a feasible plan.

Finally, Counsel has also discussed conversion to a Chapter 11 but Debtor does not have sufficient income to sustain a mortgage payment after taking the costs of medical care into account.

## **DEBTOR'S IN *PRO SE* MOTION NOT TO CLOSE**

Debtor filed a handwritten note to the court on September 18, 2020 that the court has taken to be an Opposition to Trustee's Motion to Dismiss. Dckt. 50. Through this one page note, Debtor states the following:

I Dorothy Miko am asking you to not close the Chapter 13. I need more time to get the Tenants, David Beerschinger and Teresa Fisher out of 6173 Dark Canyon Rd. Kelsey, Ca. 95667. The Courts here are still closed and I (Dorothy Miko) can not surve[sic] the tenants with court papers to move[.]

They have been given (2) 3 day notices to pay rent or Quit and a 60 Day Notice to Move. They are still here and not paying total amount of rent. I am sending you a copy of the papers.

[signature] Dorothy Miko

Dckt. 50. Attached to this note are:

- 60 Day Notice to Vacate for tenants David Boerschinger and Teresa Fisher dated September 14, 2020
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher dated September 14, 2020
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher [undated]
- 3-Day Notice to Pay Rent or Quit for tenants David Boerschinger and Teresa Fisher dated May 1, 2020
- 60 Day Notice to Vacate for tenants David Boerschinger and Teresa Fisher dated May 1, 2020

Debtor's handwritten opposition (Dckt. 50) discusses the need to evict tenants. What it does not address is what Debtor's Chapter 13 plan can and will be. In effect, Debtor has "parked" in Chapter 13, protected but not prosecuting a plan. While such may appear to a lay person to be a reasonable device in the 2020 COVID-19 pandemic world, for a Chapter 13 case Debtor needs to be prosecuting a plan. That may include seeking a loan modification. That may be selling property. But it must be part of a properly confirmed Chapter 13 plan.

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 14, 2020. By the court's calculation, 71 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 Debtors have failed to file and confirm a new plan.

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

Debtor filed an Amended Plan and Motion to Confirm on September 11, 2020 and August 18, 2020, respectively. Dckt. 74, 60. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 62. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

The challenge that the court faces is that a Motion to Confirm was filed in August 2020, but a Second Amended Plan was filed a month later in September 2020. At the hearing, **XXXXXXXXXX**

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

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

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

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

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

38. [20-20880-E-13](#)      **PATRICIA SHIELDS**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Marc Voisenat**                      **8-25-20 [37]**

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

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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 August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on September 9, 2020. Dckt. 41. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$15,390.08 delinquent in plan payments, which represents multiple months of the \$6,718.51 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.

39. [17-26581-E-13](#)      **BRIAN/PEGGY WINSHIP**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Peter Macaluso**                      **8-21-20 [53]**

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

-----  
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 August 21, 2020. 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 Debtors are delinquent in plan payments.

## **DEBTORS' OPPOSITION**

Debtors filed an Opposition on September 17, 2020. Dckt. 57. Debtors testify that they will meet with their counsel to draft a modified plan that can be filed and set for hearing after being effected by COVID-19. Dckt. 59.

## **DISCUSSION**

### **Delinquent**

Debtors are \$6,840.00 delinquent in plan payments, which represents multiple months of the \$1,910.00 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 Debtors, 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.

**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—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 June 1, 2020. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Russell Howell Puckett ("Debtor"), is in material default under the Plan section 5.03 because the plan will take 60 months due to unsecured claims being nearly \$10,000 greater than scheduled.

## DISCUSSION

A review of the plan shows the section to which Trustee refers is actually 6.04 for "Remedies upon default." Dckt. 29. That section allows Trustee to seek dismissal of the case if the plan will complete more than 6 months from the stated plan term, which is the case here where the confirmed Plan is for a thirty-six month term.

The Trustee concurred with the continuance of the hearing.

## September 23, 2020 Hearing

At the hearing, ~~XXXXXX~~

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 15, 2020. The court computes that 39 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 18, 2020.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 21, 2020. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Debtor is delinquent in plan payments.

## **DISCUSSION**

### **No Plan Payments Made**

Debtor did not commence making plan payments and is \$2,500.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

### **Order to Show Cause**

Debtor has also failed to make the installment payments required related to her petition filing. The Order to Show Cause for Failure to Pay Fees has been granted.

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.

43. [17-25489-E-13](#)      **FRED KENDLE**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Mark Shmorgon**                      **8-21-20 [97]**

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on August 23, 2020. Dckt. 101. Debtor states the delinquency will be cured prior to the hearing date.

**DISCUSSION**

**Delinquent**

Debtor is \$3,880.70 delinquent in plan payments, which represents multiple months of the

\$1,685.90 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.

44. [16-25490-E-13](#)      **WILLIAM/TONYA HERKEL**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Matthew DeCaminada**                      **8-21-20 [137]**

**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 August 21, 2020. 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 Debtors are delinquent in plan payments.

## **DEBTORS' OPPOSITION**

Debtors filed an Opposition on September 9, 2020. Dckt. 141. Debtors state they will file a modified plan to cure the delinquency.

## **DISCUSSION**

### **Delinquent**

Debtors are \$3,000.00 delinquent in plan payments, which represents multiple months of the \$600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXX.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Linda Christina Conkling ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 17, 2020. Dckt. 69. Debtor acknowledges the delinquency and admits payments cannot become current. Declaration, Dckt. 70. Debtor cites COVID-19 related reasons for delaying the sale of Debtor's property. *Id.* Debtor anticipates the property will be ready for sale on July 1, 2020, and part of the proceeds would be directed to making plan payments. *Id.* She indicates having already employed a real estate agent to list the property once the repairs are completed. *Id.* Debtor also anticipates having a new proposed plan prior to the hearing on the instant motion. Opposition, Dckt. 69.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,385.29 delinquent in plan payments, which represents multiple months of the \$4,455.00 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).

## CARES Act

Under the CARES Act amendments to the Bankruptcy Code, as they pertain to Chapter 13 debtors, Congress added subsection (d)(1) to 11 U.S.C. § 1329 to permit a debtor to modify a confirmed plan due to events flowing from the current COVID-19 pandemic.

Here, Debtor testifies to being affected by the current health pandemic as she has been unable to complete necessary repairs that will allow her to sell her property.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor's prosecution of this case (there being a confirmed plan that now needs to be modified), the financial uncertainty concerning employment, and Debtor's clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

### September 23, 2020 Hearing

At the hearing, **xxxxxx**

46. [18-23897-E-13](#)      **RONALD GADREULT**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Steven Alpert**                      **8-21-20 [87]**

**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 August 21, 2020. 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 Debtor is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 31, 2020. Dckt. 91. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,996.00 delinquent in plan payments, which represents multiple months of the \$1,700.00 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.

# FINAL RULINGS

47. [18-27400-E-13](#)      **MICHAEL/TAMMIE PORTZER**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mary Anderson**                      **8-24-20 [49]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30, days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Debtors are delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtors are \$18,180.00 delinquent in plan payments, which represents multiple months of the \$6,060.00 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. [17-27701](#)-E-13      EDWARD/MYLINLINNY      MOTION TO DISMISS CASE  
[DPC-4](#)                      STEARNS                      8-21-20 [56]  
                                    Fred Ihejirika

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtors are delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on September 9, 2020. Dckt. 73, 71. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 74. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,540.47 delinquent in plan payments, which represents multiple months of the \$1,402.73 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.

51. [18-22505-E-13](#)      **OSIRIS HENDERSON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Gabriel Liberman**                      **8-21-20 [75]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed Ex Parte Motion to Dismiss the pending Motion on September 14, 2020, Dckt. 92; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Osiris Lemar Henderson (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 92, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$225.00 delinquent in plan payments, which represents multiple months of the \$75.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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



**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 26, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. Debtor has failed to make plan payments.
2. The Plan will not complete within the 60 months proposed.

## DISCUSSION

### Delinquent

Debtor is \$10,248.00 delinquent in plan payments, which represents multiple months of the \$820.00 plan payment. Order Confirming Modified Plan, Dckt. 79. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the file discloses that Debtor has taken three swings at confirming a modified plan since December 31, 2019. Each were denied confirmation. Starting with the most recent, the

grounds for denial of confirmation include the following as stated in the Civil Minutes from the hearing on the Motion to Confirm:

Upon review of this case, the Debtor's substantial defaults, 18 of 22 payments (82% of the required payments), multiple unfulfilled promises to modify the plan to address the defaults, Debtor's response to the Trustee's Opposition merely being a response by Debtor's counsel that the payments will be increased, and the Debtor being unable or unwilling to provide testimony under penalty of perjury to provide the court with evidence to show that such increase would be feasible; the court concludes that modification of the plan and performance thereof is not financially feasible.

Debtor has chosen not to provide any testimony about increasing her expenses to exhaust increases in income. On August 17, 2020, Debtor filed yet another statement of income and expenses under penalty of perjury, designating them as Janus-faced Amended/Supplemental Schedules I and J. Dckt. 159.

For the Amended/Supplemental Schedule I, Debtor states that the non-filing spouse is unemployed, but further states "Starting 8/21/2017 Vik will be on straight commission." Dckt. 159 at 3. "Vik" is not identified. For the non-filing spouse, unemployment compensation of \$1,950.00 a month is listed on the Amended/Supplemental Schedule I. *Id.* Given that this bankruptcy case was filed in 2018, it is unclear the relevance of "Vik" being paid on a commission basis in 2017. If this is a typo and "Vik" will start generating commission income in August 2020, no information about what this projected income is for the court to determine whether the Plan is feasible and what projected (forward looking) disposable income is being paid into the Plan.

Debtor has clearly demonstrated that prosecution of a Chapter 13 Plan in this case is not feasible. Debtor has repeatedly defaulted. Hitting the reset button and filing a new case may well be what Debtor needs to do. But merely reenforcing the practice of repeatedly defaulting and now seeking to use a CARES Act extension of time in which to default is not warranted.

Civ. Min., Dckt 167 at 4.

For the next prior motion to confirm a modified plan, confirmation was denied due to Debtor being \$992 in default on the proposed plan payments. Civil Minutes, March 31, 2020 hearing; Dckt. 133 at 2.

Then, moving back to the first Motion to Confirm a modified plan in 2020, confirmation was denied due to inconsistent plans and plan terms and time period, the court stating:

Indeed, Debtor filed two plans with her Motion to Confirm. Dckt. 88. The first plan that appears, titled "Amended Plan," provides under Section 7 that "Debtor has paid \$100.00 through December 31, 2019. Commencing January 25, 2020 plan payments shall be \$922.00 per month." *Id.* at 7. This "Amended Plan"

is dated December 31, 2019. The second plan attached, titled “Chapter 13 Plan,” provides under Section 7, that “Debtor has paid \$1,750.00 through December 31, 2019. Commencing January 25, 2020 plan payments shall be \$922.00 per month.” Id. at 14. This Plan is also dated December 31, 2019.

The court is uncertain as to which Plan it would be confirming. Thus, the Plan does not comply with 11 U.S.C. § 1325(a)(1).

Civil Minutes, February 4, 2020 hearing; Dckt. 116 at 2-3.

### **Exceeding Proposed Term**

The Trustee also shows that Debtor is in material default under the Plan because the Plan will complete in 73 months as opposed to the 60 months proposed. Section 6.04 of the Plan makes that failure a breach of the Plan, in addition to violating the Bankruptcy Code as this exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

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.

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 121; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Cecilia Smith (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 121, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. [16-25411-E-13](#) **CANDACE WARD-PORTER** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Shareen Golbahar** **8-21-20 [61]**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

57. [20-24015-E-13](#) **ANTHONY/LINDSEY LEWIS** **ORDER TO SHOW CAUSE - FAILURE**  
**Joseph Canning** **TO PAY FEES**  
**9-2-20 [17]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 4, 2020. The court computes that 19 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: \$310.00 due on August 19, 2020.

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

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtors are delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on September 4, 2020. Dckt. 73, 70. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 72. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling: No appearance at the September 23, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 3, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Marcus Da Mone Buckner (“Debtor”), is \$4,000 delinquent with monthly payments of \$1,000.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 17, 2020. Dckt. 96. Debtor’s counsel reports he is meeting with Debtor on June 18, 2020 and will update the record thereafter.

On June 24, 2020, Debtor filed a declaration reporting Debtor has experienced increased expenses due to the COVID pandemic and need to provide family support. Debtor indicates a modified plan will be filed.

#### **DISCUSSION**

The Debtor has indicated a modified plan will be filed, but nothing has been filed to date.

A promise to file a new plan or pay is not evidence that resolves the Motion. However, given the Debtor’s prosecution of this case, the financial uncertainty concerning employment, and Debtor’s clear, personal knowledge testimony concerning financial and economic factors Debtor is wrestling with, a continuance of this hearing is warranted.

## **Modified Plan Filed and Confirmed**

On June 26, 2020, Debtor filed a Modified Plan. Dckt. 105. The Motion to Confirm was set for hearing for August 11, 2020. Dckt. 101. The Motion was granted, and Debtor's Modified Plan was confirmed on September 16, 2020. Dckt. 131.

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 denied without prejudice as moot.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Stephanie Lyn Drury (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on September 17, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 34.

Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 17, 2020. *McFadden*, 37 B.R. at 521.

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

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

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

appearing,

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

61. [18-26022-E-13](#)      **MAURICE PATTERSON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Thomas Amberg**                      **8-21-20 [39]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Maurice Patterson (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

62. [18-26222-E-13](#)      **JARITA GIVENS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mohammad Mokarram**      **8-21-20 [27]**

**DEBTOR DISMISSED: 8/31/20**  
**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

63. [18-27922-E-13](#)      **LOURDES ALVARADO**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mark J. Hannon**      **8-21-20 [28]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor’s Plan will not complete within the 60 months proposed.

## DISCUSSION

### Exceeding Sixty Months

Debtor is in material default under the Plan because the Plan will complete in 78 months as opposed to the 60 months proposed. The plan proposes to pay 100% dividend to unsecured claims but filed unsecured claims were \$8,711.67 greater than scheduled. Section 6.04 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1322(d).

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 September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments and the plan will not complete within the 60 months proposed.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,146.14 delinquent in plan payments, which represents less than one month of the \$1,150.00 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).

### **Exceeding Sixty Months**

Debtor is in material default under the Plan because the plan will take a total of 68 months, which is eight months longer than the proposed term of 60 months. Debtor also failed to timely file an objection to Notice of Filed Claims or file and serve a modified plan and motion to confirm within 90 days after service of the Notice of Filed Claims. Failure to timely object to claims and failure to file a

plan constitutes unreasonable delay by the debtors that is prejudicial to creditors. *Id.*

Debtor's confirmed plan would take 68 months to complete which is in excess of the 60 month plan by 8 months.

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 September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Garret Deleon Ambrosio and Elaine Marie Gabagat-Ambrosio (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

66. [18-22531-E-13](#)      **JOSEFINA MAKANA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mikalah Liviakis**      **8-21-20 [26]**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

67. [19-21435-E-13](#)      **HORTENCIA NUNEZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Peter Macaluso**      **8-24-20 [48]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on September 18, 2020. Dckt. 60, 56. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 59. 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.

68. [19-24835-E-13](#) **YAMINAH HEAD** **CONTINUED MOTION TO DISMISS**  
[DPC-1](#) **Gabriel Liberman** **CASE**  
**6-3-20 [18]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Yamina Head (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

69. [16-25337-E-13](#)      **DEWAYNE WILLIAMS**      **MOTION TO DISMISS CASE**  
[DPC-6](#)                      **Peter Cianchetta**                      **8-21-20 [168]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 175; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Dewayne Williams (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 175, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Meredith Lawler (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtors are delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtors are \$7,284.22 delinquent in plan payments, which represents multiple months of the \$2,097.37 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).

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

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

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

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

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

72. [17-24939-E-13](#)      **GRETEL ELVING**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mohammad Mokarram**                      **8-21-20 [32]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

**DISCUSSION**

**Delinquent**

Debtor is \$3,500.00 delinquent in plan payments, which represents multiple months of the

\$1,100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 11, 2020, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Joshua Lynn Norman and Connie Lynn Norman (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 denied without prejudice as moot.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Melony Owens’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on September 10, 2020, however, converting the case to a proceeding under Chapter 7. Dckt. 118.

Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 10, 2020. *McFadden*, 37 B.R. at 521.

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

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

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

appearing,

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

75. [17-25541-E-13](#)      **MIRANDA MARTINEZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Thomas Amberg**                      **8-21-20 [35]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on September 4, 2020 stating that Debtor has no basis to oppose Trustee’s Motion. Dckt. 39.

**DISCUSSION**

**Delinquent**

Debtor is \$2,105.00 delinquent in plan payments, which represents multiple months of the

\$776.00 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.

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 127; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Harry R. Nash and Josephine Ann Nash (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 127, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

77. [17-25945-E-13](#) HARRY/JOSEPHINE NASH  
[DPC-3](#) Peter Macaluso

CONTINUED MOTION TO DISMISS  
CASE  
6-3-20 [109]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 129; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Harry R. Nash and Josephine Ann Nash (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 129, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 60; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Ann Athlene Conrad (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 60, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 25, 2020. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,660.00 delinquent in plan payments, which represents multiple months of the \$915.00 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.

80. [19-24150-E-13](#)      **BRYAN LEE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mikalah Liviakis**                      **8-24-20 [31]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Debtor is delinquent in plan payments.

**DISCUSSION**

**Delinquent**

Debtor is \$3,960.00 delinquent in plan payments, which represents multiple months of the

\$990.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Debtor is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,650.00 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).

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.

82. [19-25256-E-13](#)      **RONALD/MICHELE HASSETT**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Rick Morin**                      **8-24-20 [31]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Debtor is delinquent in plan payments.

**DEBTOR’S NON-OPPOSITION**

Debtors do not oppose Trustee’s Motion to Dismiss. Dckt. 36.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,875.00 delinquent in plan payments, which represents multiple months of the \$2,925.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 16, 2020, Dckt. 49; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Anthony M. Moseley (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 49, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

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

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on September 18, 2020. Dckt. 95, 93. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 97. 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.

85. [18-25861](#)-E-13      MICHAEL SCHILLACI      MOTION TO DISMISS CASE  
[DPC-2](#)                      Michael Hays                      8-21-20 [64]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

86. [20-22861](#)-E-13      RAYANNE FRAZIER      MOTION TO DISMISS CASE  
[DPC-1](#)                      Mikalah Liviakis                      8-26-20 [30]

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 26, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtor failed to commence plan payments.

## **DISCUSSION**

### **Failed to Commence Plan Payments**

Debtor did not commence making plan payments and is \$3,000.00 delinquent in plan payments, which represents one month of the \$3,000.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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 September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,480.00 delinquent in plan payments, which represents multiple months of the \$870.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 26, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. Debtor is delinquent in plan payments.
2. Debtor has failed to file an amended Plan.

## DISCUSSION

### Delinquent

Debtor is \$3,920.59 delinquent in plan payments, which represents over one month of the \$2,328.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of

confirmation to Debtor's prior plan on July 14, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 143; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jesse Soto Ortiz (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 143, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Sharmagne L. Winbush (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling: No appearance at the September 23, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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:

1. Debtor is delinquent in plan payments.
2. The Plan will exceed the sixty months proposed.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,003.67 delinquent in plan payments, which represents multiple months of the \$2,183.39 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Material Default for Breaching a Plan Term**

Debtor is in material default under the Plan because the plan will complete in 66, which is

more than the proposed sixty months. Section 5.03 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

### **Tentative Ruling**

The Trustee reports that Debtor has paid \$120,510.05 in plan payments during the 60 months of the Plan. Motion, ¶ 1; Dckt. 84. The Amended Plan in this case was filed on July 21, 2015, requiring \$1,925.00 a month in plan payments. Dckt. 19. There was *de minimis* unsecured claims provided for in the plan, \$3,865.18 (with no proofs of claims filed for unsecured claims), with the real focus being curing the arrearage on the claim secured by Debtor's residence.

Thus, it may be that Debtor has sufficiently cure the arrearages that whatever shortfall remains the protection of Chapter 13 is not required.

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 September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 24, 2020. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 is delinquent in plan payments.

**DISCUSSION**

**Delinquent**

Debtor is \$11,285.34 delinquent in plan payments, which represents multiple months of the \$5,113.88 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.

93. [18-24874-E-13](#)      **CARRIE SCHAEFER**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Mohammad Mokarram**                      **8-21-20 [42]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 is delinquent in plan payments.

**DISCUSSION**

**Delinquent**

Debtor is \$4,300.00 delinquent in plan payments, which represents multiple months of the

\$800.00 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.

94. [20-22375-E-13](#)      ANTHONY/THELMA BAUTISTA      MOTION TO DISMISS CASE  
[DPC-2](#)                      Jeanne Serrano                      8-24-20 [48]

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling: No appearance at the September 23, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtor is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,500.00 delinquent in plan payments, which represents multiple months of the \$844.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan 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.

96. [19-24877-E-13](#)      **JUAN ALMANZA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Peter Macaluso**                      **8-24-20 [63]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 8, 2020, Dckt. 60; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Shanita Lorain Jefferson (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 60, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 Debtors are delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtors are \$3,370.00 delinquent in plan payments, which represents multiple months of the \$1,685.00 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.



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.

100. [19-23778-E-13](#)      **PATRICK MOORE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mark Shmorgon**                      **8-24-20 [37]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 1, 2020, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Patrick Moore (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 1, 2020, Dckt. 92; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Marcis Allan Beutler and Marti Leeann Beutler (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 92, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 29, 2020. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on July 22, 2020.

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

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

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

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

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

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

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 9, 2020, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Leo Cabral (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

104. [15-29783](#)-E-13      PATRICIA PENNUNURI      MOTION TO DISMISS CASE  
[DPC-3](#)      Stephen Reynolds      8-21-20 [[72](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

105. [17-24583](#)-E-13      JENNIFER ICANBERRY      MOTION TO DISMISS CASE  
[DPC-2](#)      Thomas Amberg      8-21-20 [[28](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

106. [19-26291](#)-E-13      LINDA CONKLING      MOTION TO DISMISS CASE  
[DPC-2](#)      Matthew DeCaminada      8-24-20 [[76](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the September 23, 2020 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 the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling: No appearance at the September 23, 2020 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 21, 2020. 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 hearing on the Motion to Dismiss is continued to 9:00 a.m. on November 18, 2020.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Debtors are delinquent in plan payments.

#### **DEBTORS’ COUNSEL REPLY**

Debtors’ Counsel filed a Reply on September 9, 2020. Dckt. 91. Debtors’ Counsel informs the court that Debtors will soon meet with Counsel to draft, file and set a modified plan in order to address the default in plan payments. Debtors’ Counsel further requests that the court continue the hearing to the next available dismissal calendar to allow for Debtors to file the modified plan and a motion to confirm.

#### **DISCUSSION**

##### **Delinquent**

Debtor are \$4,112.52 delinquent in plan payments, which represents multiple months of the \$2,280.98 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 light of the “modest” default (at least in number of months) and Debtor’s counsel actively working to meet with a client and moving forward on the “game plan” to cure the default, the court continues the hearing.

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





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.

110. [19-27298-E-13](#)      **TRESSA THOMPSON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Muoi Chea**                      **8-25-20 [20]**

**Final Ruling:** No appearance at the September 23, 2020 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 15, 2020, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Tressa LaNiece Thompson (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 28, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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