

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

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

**November 18, 2020 at 9:00 a.m.**

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1.     [18-25700-E-13](#)     **JONNELL DEEN-CHASE**     **CONTINUED MOTION TO DISMISS**  
[DPC-2](#)             **Peter Macaluso**             **CASE**  
   **6-3-20 [46]**

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 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). 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, Jonnell Deen-Chase (“Debtor”), is delinquent in payments in the amount of \$4,450.56.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 16, 2020, requesting a continuance. Dckt. 50. The Debtor’s Declaration filed in support of the Opposition explains that Debtor fell delinquent due to unexpected expenses relating to Debtor’s vehicle being stolen and emergency veterinary expenses. Dckt. 51.

**DISCUSSION**

In light of Debtor’s request and the circumstances surrounding Debtor’s delinquency, the court continued the hearing on this Motion to August 25, 2020 at 2:00pm.

While Debtor requested a continuance to become current in payments, the longer continuance will also allow Debtor to file and set for confirmation hearing a modified plan in the event the delinquency cannot be cured.

**August 25, 2020 Hearing**

A review of the Docket on August 22, 2020 disclosed that nothing further had been filed. The Trustee has not sought dismissal of this Motion due to Debtor having cured the default, nor has Debtor filed a modified plan and motion to confirm the modified plan.

The Debtor’s inability to prosecute a modified plan, and the Trustee not reporting that Debtor has cured the default in the fifty-two (52) days since the court continued the hearing from the original August 1, 2020 hearing date demonstrates that modification is not achievable in this case. Debtor’s affirmative testimony in obtaining the continuance included the following:

3. I will be caught up by mid-July. Likely earlier. I will pay \$2,273 on Tuesday, 6/16. And can maybe pay the rest of the balance due with my 6/30 paycheck. I would request to be current by mid July if at all possible. I am working as I work for a construction company and we are essential. There is no chance that we will stop working and I truly am working to get caught up.

Declaration, ¶ 3; Dckt. 51.

Unfortunately, it appears that Debtor was not able to get the default cured in early July, later in July, or in the first twenty days of August, and will need to pursue a reorganization, if one is possible, in a new case.

In this case, the Chapter 13 Plan was confirmed without a hearing, the Debtor having timely filed the plan and no objection being filed. Thus, the court did not have the opportunity to review Debtor’s Schedule J in considering whether the proposed plan was feasible. However, upon review now, it appears that Debtor’s financial challenges may be more systemic than an isolated theft of a vehicle and veterinary bill.

On Schedule J Debtor states that her monthly expenses for a family unit of one person average \$1,513.68 a month, leaving her with projected disposable income of \$2,300 a month to fund a plan. Dckt. 12 at 25-26. Some of the questionable monthly average expenses include:

- A. Repairs and Maintenance on Her Home.....(\$20.00)
- B. Food and Housekeeping Supplies.....(\$300.00)

Assuming \$50 a month for housekeeping supplies, that results in there being \$250 a month for food (whether at home or dining in a restaurant) for five years, which is \$2.77 per meal in a thirty-day month.

C. Entertainment and Recreation.....(\$21.71)

Twenty “bucks” a month over five years for entertainment and recreation does not appear to be realistic or accurate. In substance, Debtor will have no entertainment or recreation for five years. Also, seeing a number with such odd cents as (\$21.71) makes it appear that this is a fictional number created as part of the “fictional” expenses to “justify” a predetermined projected disposable income to create the appearance of feasibility.

On Schedule A/B, Debtor states under penalty of perjury that she does not have any non-farm animals, such as dogs, cats, or horses. Dckt. 12 at 5. It is unclear how Debtor can have a \$1,000 veterinary expense when she states under penalty of perjury that she has no pets.

It appears that Debtor may have more serious issues than merely having defaulted in plan payments.

At the hearing the Trustee agreed to a further continuance to afford the Debtor and counsel the opportunity to address these issues.

**NOVEMBER 18, 2020 CONTINUED HEARING**

**Supplemental Declaration  
and Amended Schedules I and J**

Debtor filed a Supplemental Declaration on September 30. Dckt. 60. Debtor addresses the court’s concerns regarding her expenses and testifies under penalty of perjury:

I do not do any maintenance on the house at this time and have decided to defer these for the balance of my plan. When and if I needed some help in repairs I have some boss that is on the good-old boy network which costs me little or nothing and my ex-husband would and does pay for these costs. We still get along and does not live with me and we get along good.

*Id.*, 1:26-27, 2:1-5.

The court’s concern with respect to the prior statement made in September 2018 on Schedule J (Dckt. 12) and continuing to November 2020 is that Debtor is telling the court under penalty of perjury that she has had no maintenance or repair expenses for the past three years and will have none for the next two years. While telling the court that she has a “good ol’ boys” network who work for free, the court does not find that statement credible in light of Debtor’s other explanations under penalty of perjury.

Debtor then tries to explain away her statement under penalty of perjury that she spends only \$2.77 a meal over the sixty months of the plan. That will be 1,826 days of meals for which Debtor testifies under penalty of perjury that she has to spend only \$2.77 per meal during the five years of this plan. Her testimony under penalty of perjury to the court is:

As for the food I do not eat a lot of meals and most are provided at work as part of the office staff benefits.

*Id.*, p. 2:5-7. In this Declaration, prepared with her counsel, Debtor can only testify that she does not eat “a lot of meals.” Further, that “most” of her meals are provided at work.” No testimony is provided as to how breakfast, lunch, and dinner are provided at work and how such meals are provided on weekends and holidays.

Looking at Schedule I (Dckt. 12 at 23), Debtor states under penalty that she works at Capitol Iron Works. No evidence is provided that Debtor’s compensation/benefits includes Capitol Iron Works feeding her for five years and Debtor not having to provide food for her own nourishment. The court does not find such vague reference to her employer providing Debtor with 1,826 meals over five years to be credible.

Debtor then testifies that she has other substantial support or access to monies from other sources, testifying:

I have a significant other that helps with the monthly obligations when, and if I need the help. This is also why my entertainment and recreation is so low as it has been his habit to insure these are accomplished.

*Id.*, p. 2:7-10. The Declaration is carefully drafted to not disclose any specific information, but that Debtor has a “significant other” who “helps” with monthly obligations. This person is not identified and the amount of “help” is not stated. Further, missing is whether this “significant other” is now living in the same residence as Debtor and whether the “significant other” is actually paying half of the housing and living expenses, and not merely living there for free - it being subsidized by Debtor’s creditors having the “significant other’s” expenses hidden in Debtor’s expenses.

With respect to her pets, Debtor states that she has two “mutts” and a cat, but did not think of listing them since they have no significant value. *Id.*, p. 2:10-12. However, these “mutts” and cat were the source of a \$1,000 vet bill that has derailed Debtor’s Plan.

Debtor did not file this case in *pro se*, but has been from day one represented by experienced bankruptcy counsel. It seems unlikely that such counsel and experienced staff, when reviewing the draft of the Schedules with Debtor did not question her concerning the assets listed or did not ask her “do you have any pets.”

On September 30, 2020, Debtor filed a Supplemental Schedule I and Schedule J, purporting to state changes in her income and expenses as of September 16, 2020. Dckt. 58. For Schedule I, Debtor states that income has grown to \$5,416.67 per month (a modest increase of \$400 a month). Dckt. 58 at 4.

On Supplemental Schedule J, Debtor now states under penalty of perjury the following changes are her actual, reasonable and necessary expenses, and the change from Debtor’s prior statements under penalty of perjury what the actual, reasonable, and necessary expenses were upon which the now defaulted plan was confirmed:

Expense	Supplemental Schedule J, Dckt. 58	Original Schedule J, Dckt. 12	Percentage Increase/(Decrease) [The increase in the font size for the percentage increase is the same as the change of the increased dollar amount on the Supplemental Schedule]
Home Maintenance/Repairs	\$99.60	\$20.00	<b>398.00%</b>
Food/Housekeeping Supplies	\$750.00	\$300.00	<b>150.00%</b>
Clothing/Laundry/Dry Cleaning	\$105.00	\$50.00	<b>110.00%</b>
Personal Care Products/Services	\$140.00	\$40.00	<b>250.00%</b>
Entertainment/Recreation	\$121.17	\$21.71	<b>458.13%</b>

With these changes, Debtor states under penalty of perjury that her expenses have grown to \$2,373.28 monthly, from the \$1,513.68 stated under penalty of perjury on the Original Schedule J (Dckt. 12 at 26) filed in this case.

With this increase in expenses Debtor is able to show a monthly net income computation of \$2,273.20 (Dckt. 58 at 7). Coincidentally, this is slightly less than the nice, round \$2,300 that Debtor showed on Original Schedule J (Dckt. 12 at 26) upon which she justified her monthly plan payment.

The court, based on the evidence presented, believes that this is not a mere “coincidence,” but a carefully crafted/manufactured number by Debtor and Debtor’s counsel.

Debtor offers no explanation as to why she now needs \$750 a month for food, when she states under penalty of perjury that most of her meals are provided as part of her work:

As for the food I do not eat a lot of meals and most are provided at work as part of the office staff benefits.

Declaration, p. 2:5-7; Dckt. 60. Which of these two statements under penalty of perjury, if either, are true - does Debtor really have \$750 in food expenses or, as for the past three years the Debtor has had no significant food expenses is not clearly shown by the evidence. It appears that at least one, and possibly both, are neither actual nor truthful.

Debtor has filed Supplemental Schedules I on September 30, 2020. Dckt. 58. On

Supplemental Schedule I, Debtor has added a \$200.00 monthly income assistance from her “boyfriend.” *Id.*, at 5. Debtor does not state how long she has been getting such additional income and whether the “boyfriend” is residing in her residence and consuming various goods and services that are included in Debtor’s expenses.

### November 13, 2020 Ex-Parte Motion to Dismiss

On November 13, 2020, Trustee filed an Ex-Parte Motion to Dismiss the instant motion on the basis that Debtor is now current in plan payments. While such an ex parte motion would normally be granted, in this case the Motion to Dismiss has uncovered substantial inaccuracies in the information provided by Debtor under penalty of perjury, as well as possible incomplete information.

At the hearing, **XXXXXXX**

~~———— Cause exists to dismiss this Chapter 13 case. Possibly, Debtor and counsel can revisit Debtor’s actual financial information, provide accurate information in a new case, and not have the Debtor provide clearly inaccurate information under penalty of perjury and then not provide conflicting information and testimony under penalty of perjury.~~

~~———— 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, 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. 62, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

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

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

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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 October 21, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, John Henry Monroe (“Debtor”), failed to file an amended plan after Trustee’s Objection to Confirmation was sustained and the Debtor’s Plan was denied on September 3, 2020.

**DEBTOR’S RESPONSE**

Debtor filed a Response on November 4, 2020. Dckt. 36. Debtor states that the reason for the delay has been due to the classification of CitiFinancial Mortgage, which held a second deed of trust against Debtor’s home. *Id.*, at 1. Debtor was informed that CitiFinancial was no longer in business, CitiHoldings had taken over, and had sold the account. *Id.* After being informed that the debt had been charged off, Debtor submitted a request for reconveyance and on October 20, 2020 the reconveyance was recorded. *Id.*, at 2. Debtor claims that there will be an amended plan and supporting documents on file the week of November 9, 2020. *Id.*

**DISCUSSION**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on September 3, 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).

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

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

is dismissed.

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

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

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

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



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 18, 2020. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on October 13, 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.

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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 October 20, 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 the debtor, Kelvin Quentin Pickett (“Debtor”), is delinquent in plan payments and has failed to file an amended plan.

#### **DEBTOR’S OPPOSITION**

On November 3, 2020, Debtor filed an Opposition stating that a new plan will be filed prior to this hearing. Dckt. 31.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$4,080.00 delinquent in plan payments, which represents multiple months of the \$2,040.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

##### **Prior Plan Denied, New Plan and Motion Filed**

Debtor filed a First Amended Plan on November 11, 2020. Dckt. 42. The Amended Plan provides for Debtor to have made a total of \$2,040 for the first four months of the Plan - only \$500 a month - and then \$2,107 for the remaining 56 months of the Plan. Plan, Add. Prov., p. 7; Dckt. 42.

The Motion to Confirm states with particularity grounds upon which confirmation is requested. Dckt. 38. The Motion states that all of Debtor’s assets are exempt.

Debtor provides his Declaration in support of the Motion to Confirm the Amended Plan. Dckt. 40. Debtor's testimony does not include any testimony as to why for the first four months of the Plan the Debtor pays a discounted amount of \$500 a month and where the \$6,000 (\$1,500 a month) were diverted during the first four months of the Plan.

On Supplemental Schedule I filed on November 12, 2020, Debtor states that he is unemployed and has income of \$2,910.00 a month. Dckt. 36 at 4-5. The sources of this income are stated to be:

Rental of Property/Business.....	\$ 300	
“state sec asst” .....	\$1,440	
Daughter.....	\$ 300	(Not on Original Schedule I)
Brother.....	\$ 600	(Not on Original Schedule I)
“side jobs”.....	\$ 270	(Not on Original Schedule I)

The Declaration of Ronald Pickett has been filed in support of the Motion to Confirm. In it, Ronald Pickett testifies that he has \$4,000 a month in net income, but expenses of only \$400 a month. Dckt. 34. Ronald Pickett offers no testimony as to how an adult person in the 21<sup>st</sup> Century can only have \$400 a month in expenses. Given that this declaration necessarily had to be carefully crafted by Debtor's counsel and represents the best testimony that Ronald Pickett can provide, it falls woefully short of being credible.

The second Declaration is provided by Igauna Pickett, Debtor's daughter, an adult that Debtor lists as a dependent. Dckt. 35. She testifies that her net income is approximately \$800 a month, and she has expenses of only \$150 a month. As with the Debtor's brother, Igauna Pickett offers no testimony as to how an adult in the 21<sup>st</sup> Century can have only \$150 a month in expenses. Again, given that this declaration necessarily had to be carefully crafted by Debtor's counsel and represents the best testimony that Igauna Pickett can provide, it falls woefully short of being credible.

Debtor also states that for the remaining 56 months of the Plan, he will generate \$270 a month of net income from “side jobs.” In his Declaration, Debtor provides conflicting testimony, stating that he has a part-time job in which his income is actually \$660 a month - 144.44% more than stated under penalty of perjury on Supplemental Schedule I.

On Supplemental Schedule J Debtor lists having two adult children who are “dependents.” Debtor does not explain why these two adults are “dependents.” On Supplemental Schedule C, Debtor states under penalty of perjury that his food and housekeeping supplies expense for his family unit of three adults is only \$180.00 a month. Dckt. 36 at 7. This is highly unlikely.

For the five years of the Plan, Debtor and his two adult dependents will have expenses for Personal Care Products and Services of only \$10 a month, clothing and dry cleaning of only \$10 a month, medical of only \$3 a month, entertainment/recreation of \$0.00, transportation of only \$60, and vehicle insurance \$170. For these three adults, Debtor states under penalty of perjury that their monthly expenses are only \$740. *Id.* Debtor's Declaration provides no testimony as to how these three adults - Debtor and his two dependent adult children - actually exist on only \$740 a month.

On his Statement of Financial Affairs Debtor states that he is married. Dckt. 1 at 32. No information is provided about this spouse or the spouse's income. Debtor states in response to Question

4 of the Statement of Financial Affairs that Debtor has not wage, employment, or business income for 2020, 2019, or 2018. *Id.*32.

In response to Question 5 of the Statement of Financial Affairs, Debtor states having the following income from other sources:

2020 YTD

SSA.....\$7,250

Rent For Non-Debtor Spouse.....\$2,250

2019

SSA.....\$17,400

2018

SSA.....\$ 1,700

*Id.* at 33. There is no part-time employment or “side jobs” history of income for the Debtor.

While filing an Amended Plan and Motion to Confirm, it appears that there are substantial deficiencies which counsel knows must be addressed as part of a motion to confirm a plan. There appears to be little reason to just “kick the plan down the road,” have the Trustee state opposition to confirmation based on these easily identifiable deficiencies, Debtor then being “surprised” and request a continuance for further delay, and the court allowing the Debtor to delay the prosecution of this case a further ninety days.

Cause exists to grant the Motion and dismiss this Chapter 13 case.

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

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

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

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

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

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

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

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Local Rule 9014-1(f)(1) Motion—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 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). 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).

**The Motion to Dismiss is granted.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Rafael Quiroz and Veronica Valladares-Quiroz (“Debtor”), is \$8,667.60 delinquent with plan payments of \$2,145.52.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on June 17, 2020, Dckt. 64. Debtor’s counsel requests more time to meet with Debtor due to COVID and shelter-in-place orders.

## DEBTOR'S SUPPLEMENTAL OPPOSITION

Debtor filed a Supplemental Opposition on June 23, 2020, Dckt. 66. Debtor's counsel reports he has met with Debtor and requests 60 days to file an amended plan.

### DISCUSSION

In consideration of Debtor's request and the COVID pandemic, the court shall continued the hearing to August 25, 2020 at 2:00 p.m. to allow Debtor to prepare and file a modified plan.

#### August 25, 2020 Hearing

Though the court has provided Debtor the additional time to prosecute this case, as of the preparation of this disposition, Debtor has failed to file a Motion to Confirm Plan and a Modified Plan.

The Motion to Dismiss was filed on June 3, 2020. Dckt. 60. Now, almost ninety (90) days have passed without Debtor addressing the default.

In reviewing the file, the court notes something very odd about Debtor's Declaration filed on June 23, 2020. Dckt. 67. This Declaration has Debtor's counsel in the upper left-hand corner. Debtor's counsel had demonstrated over the years the ability to clearly write, use properly constructed English language sentences, and provide declarations that provide clear testimony.

However, the Debtor's Declaration is written in a manner that it appears to have been written by someone with limited English language skills. Some examples include:

2. We have paid a total of \$37,359.17 to the Trustee over the last 23 months. We are delinquent with our payments because the **pandemic is affecting me my hotel** (Hyatt Regency Sacramento) was closed on 3/13/2020 but **my situation was affect since December 2019.**

Debtor appears to admit that the economic "problems" date all the way back to December 2019 and that Debtor has been incapable of addressing them over the past eight months.

3. Our income was impacted by the COVID-19 pandemic. This **situation (COVID-19) was affected since hotel was close on 3/13/2019. We have meeting** (virtual meeting) on 6/8/2020, **they say probably reopen on 6/22/2020**, but my department probably on September, **so I did not collect money and is affect all my family.**

4. Since the reduction of our income, **we have been able to make no payments** to the Chapter 13 Trustee.

It may be that Debtor's counsel would say that the Declaration is a verbatim transcript of the Debtor's response, without Debtor's counsel making any effort to help his client make clear testimony. Or it may be that Debtor's counsel "assigned" to Debtor the responsibility to write whatever declaration Debtor thought legally appropriate and was not involved in the process. Or, it may be that Debtor's counsel assigned the task to a non-lawyer staff member or third-party to interview the client, write

whatever that non-lawyer thought was proper, and then file it using Debtor's counsel's electronic document filing privileges. None of these are good responses.

Debtor having admitted that the events causing the default date back to December 2019 and in the past eight months Debtor being unable to address them, further continuance is not warranted. If Debtor can perform a plan, Debtor can hit the reset button and file a new Chapter 13 case.

At the hearing, the Trustee agreed to a continuance.

### **November 18, 2020 Hearing**

No further pleadings have been filed by Debtor. No amended plan or other action taken to prosecute this case. The court has, believing that Debtor and counsel were attempting to prosecute this case, has continued the hearing on multiple occasions. The Motion to Dismiss was filed on June 3, 2020. The re-re-continued November 18, 2020 hearing on Motion to Dismiss was one hundred and sixty-eight (168) days after the Motion was filed. Debtor has not been able to prosecute the case.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 11, 2020. By the court's calculation, 68 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Kirkwindell Sablad Garlit ("Debtor"), is delinquent in plan payments and has failed to file an amended plan.

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

Debtor filed a Response on November 4, 2020 stating that the delinquency will be cured prior to the hearing date. Dckt. 27.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$4,503.72 delinquent in plan payments, which represents multiple months of the \$2,225.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

##### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 16, 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).



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

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

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

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

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

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

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

-----

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.**

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).

At the hearing, counsel for the Debtor provided an explanation for the prosecution of this case and acts to be taken file a modified plan. The Trustee did not oppose the hearing being continued in light of the represented actions and facts of this case.

**November 18, 2020 Hearing**

No proposed modified plan or motion to confirm has not been filed by Debtor. The Motion to Dismiss was filed on August 24, 2020, and the hearing on that Motion has been continued several times. Though Debtor represented to the court back in September 9, 2020 Opposition that the Cameron Park property is to be sold, Debtor has not sought authorization to hire a real estate professional for the marketing and sale of the property.

Cause exists to dismiss this case. The Motion is granted and the case is dismissed.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*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, the Debtor's brother appeared. He addressed with the court that he was attempting to assist his sister, the Debtor, in moving forward to protect her financial interest. He appeared to understand the need for Debtor to obtain counsel to protect her rights and interests.

In light of the apparent family effort to address these issues the court continues the hearing.

#### **November 18, 2020 Hearing**

Unfortunately, no further action has been taken for the prosecution of this case by Debtor. Though now having family support (Debtor's brother), nothing further has been filed and no attorney has substituted in to represent the *pro se* Debtor.

It appears that Debtor is not legally competent (the ability to prosecute this legal proceeding, as opposed to the ability to function in day to day life) to continue in this legal proceeding and a personal representative or conservator needs to be appointed.

At the hearing, **XXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 10, 2020. By the court’s calculation, 69 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 ~~XXXXXXX~~.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Rakeshni Devi Sharma (“Debtor”), is delinquent in plan payments and has failed to file an amended plan.

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

Debtor filed a Modified Plan and Motion to Confirm on October 28, 2020. Dckt. 104. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 101.

This bankruptcy case was filed on May 15, 2020. This followed Debtor’s prior Chapter 13 case (in which Debtor was represented by different counsel than in the current case) that was filed on March 24, 2020, and dismissed on April 22, 2020. Bankr. E.D. Cal., 20-21739.

The Motion to Confirm appears to state grounds with particularity upon which the requested relief is based. Fed. R. Bankr. P. 9013.

Debtor’s Declaration filed in support of the Motion to Confirm appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602. However, in paragraph 10 of the Declaration, Debtor demonstrates that she does not know what her plan provides for paying creditors with secured claims, Debtor testifying under penalty of perjury:

10. All secured creditors provided for have either accepted the plan, or the plan proposes a surrender of the property securing their claims, or the plan provides to pay the creditors pursuant to section 1325(a)(5)(B).

Declaration, at 2. It appears that this “testimony” is merely a cut and paste of the statutory language from 11 U.S.C. § 1325(a)(5) for the possible alternative treatment of secured claims. They cannot all be applied to a secured claim.

Looking at the proposed Modified Plan, it does not provide any of the alternative treatments testified to by Debtor. Rather, it is merely an adequate protection provision to protect the creditor’s rights and interests while Debtor diligently prosecutes a loan modification request.

Debtor appears to be unaware of her obligation to prosecute such a loan modification request, or she signed her Declaration without reading it or without regard to what was in the Declaration.

At the hearing, counsel for the Debtor addressed this apparent either intentionally inaccurate statement or intentionally signed without reading declaration under penalty of perjury. **XXXXXXX**

**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 **XXXXXXX**.



Local Rule 9014-1(f)(1) Motion—Hearing not required.

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

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 granted and the case is dismissed.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Bradley Martin (“Debtor”), is \$9,600.00 delinquent in plan payments with monthly plan payments of \$3,200.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition June 23, 2020. Dckt. 69. Debtor’s counsel reported he had yet to meet with Debtor on the matter.

In a Supplemental Opposition, Debtor’s counsel reports having met with Debtor, that Debtor intends to file a modified plan, and requesting a 60 day continuance. Dckt. 71.

#### **DISCUSSION**

In light of Debtor’s request and the circumstances surrounding Debtor’s delinquency, the court continued the hearing on this Motion to August 25, 2020 at 2:00 p.m.

#### **August 25, 2020 Hearing**

In the June 30, 2020 Opposition (Dckt.71) Debtor requested a continuance of sixty (60) days

to allow Debtor to diligently prosecute this case and get a Modified Plan and Motion to Confirm filed. The court accommodated and continued the hearing to August 25, 2020. As of the Court's August 22, 2020 review of the Docket, no Modified Plan or Motion to Confirm have been filed. Though given a continuance, Debtor has not been able to diligently prosecute this case.

At the hearing, the Trustee concurred in the request for a continuance.

### **November 18, 2020 Hearing**

The Motion to Dismiss was filed on June 3, 2020. The re-re-continued hearing on this Motion was conducted on November 18, 2020 - one hundred and sixty-eight (168) days after the Motion was filed.

Debtor has not filed any further pleadings in prosecuting this case. No proposed Modified Plan or Motion to Confirm was filed.

Cause exists to dismiss this case. The Motion is granted, and the case is dismissed. If Debtor can diligently prosecute a Chapter 13 case, he can hit the "reset button" and file a new Chapter 13 case, starting with an almost (11 U.S.C. § 362(c)(3)) clean slate.<sup>FN. 1</sup>

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FN.1. The court notes that Debtor has had two prior unsuccessful Chapter 13 cases: 17-27655, Dismissed on December 11, 2017; and 18-20162, Dismissed on January 29, 2018.  
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The court shall issue an order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 23, 2020. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

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

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

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

Debtor filed a Response on November 3, 2020. Dckt. 51. Debtor states that he will be requesting a conversion to Chapter 7 prior to the hearing date.

#### **DISCUSSION**

Debtor is \$8,645.97 delinquent in plan payments, which represents multiple months of the \$1,565.93 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

As of the court's review of the docket in preparation of this tentative ruling, Debtor had not yet filed a Motion to Convert.

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

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

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

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

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

12. [16-28366-E-13](#) **TIMOTHY SCHAD** **CONTINUED MOTION TO DISMISS**  
[DPC-4](#) **Lucas Garcia** **CASE**  
**6-3-20 [159]**

Local Rule 9014-1(f)(1) Motion—Hearing not required.

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

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the Debtor, Timothy Schad (“Debtor”), is \$41,512.42 delinquent in plan payments.

#### **DEBTOR’S REPLY**

Debtor filed a Reply on June 18, 2020. Dckt. 163. Debtor states that COVID-19 has interfered with his income, and therefore with his ability to make plan payments. *Id.* Debtor believes he can cure the arrearage in payments by September. Debtor requests that his plan be extended by three months, a modification which Debtor refers to as “minor,” and not necessitating the filing of a Modified Plan.

Alternatively, Debtor seeks a continuance of this Motion to Dismiss to October to allow the Debtor to become fully current on plan payments. *Id.*

## **DISCUSSION**

In light of Debtor's request and the COVID pandemic, the court continued the hearing on this Motion to August 25, 2020 at 2:00 p.m.

The continuance will also allow Debtor to file and set for confirmation hearing a modified plan, which under the CARES act's revisions to 11 U.S.C. § 1329 can extend the plan to 7 years.

## **AUGUST 25, 2020 HEARING**

Though the court continued the hearing, no proposed Modified Plan and no Motion to Confirm have been filed as of the court's August 22, 2020 review of the Docket. The \$41,512.42 in plan payments as of the June 3, 2020 filing of the Motion to Dismiss (Dckt. 159), which are three months of the required \$13,801.38 a month payment, have yet to be addressed.

At the hearing, the Trustee concurred in Debtor's request for a continuance.

## **FILING OF MODIFIED PLAN**

Debtor filed a Second Modified Plan and Motion to Confirm on October 12, 2020. Dckt. 186, 182. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 184. 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 proposed Second Modified Plan has interesting terms. First, for Plan payments, it provides that Debtor will make payments of:

\$2,350.00	per month for 12 months
\$13,000.00	per month for 27 months
\$0.00	per month for 3 months (April through June 2020)
\$13,200.00	per month for 24 months

Plan Additional Provisions, Dckt. 186.

Debtor provides in his Declaration, Dckt. 184, that now his income has returned to normal levels after the three month drop. This Plan will extend the term of the Plan six months to allow for the payment in full of the unsecured claims (which is only the nondischargeable student loan obligation that "survived" Debtor's prior Chapter 7 case).

In the Supplemental Schedule I filed almost three years ago (Dckt. 113), Debtor lists substantial income from his business and his non-debtor Spouse's business.

Given the substantial payments made into this case by Debtor, it appearing that he has the financial ability to recommence making the substantial monthly payment, and it appearing that Debtor is

working to actively prosecute 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:** 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 October 21, 2020. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtors, Douglas Paul Jacobs and Kim Marie Jacobs ("Debtor"), are delinquent in plan payments, and
2. Debtor failed to file an amended plan.

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

Debtor filed a Response on November 4, 2020. Dckt. 66. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor are \$7,628.59 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 25, 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).

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

At the hearing, **XXXXXXXXXXXXXXXXXX**

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

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

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

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

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



**Final Ruling:** No appearance at the November 18, 2020 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 10, 2020. The court computes that 69 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 September 2, 2020.

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

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

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

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

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

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

**Final Ruling:** No appearance at the November 18, 2020 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 9, 2020. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$10.00 due on October 2, 2020.

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

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

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

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

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

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

**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 October 10, 2020. By the court’s calculation, 39 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Shawn Scott Dickinson and Monique Denee Dickinson (“Debtor”), have failed to file a new plan.

**FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on October 21, 2020. Dckt. 35, 30. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 32.

Unfortunately, the Motion, if the court were to accept all grounds stated therein with particularity, fails to state sufficient grounds by which this court may confirm a plan as provided in 11 U.S.C. § 1322 and § 1325.

Moving to the Debtor’s declaration, Dckt. 32, it causes the court concern as to the credibility of Debtor and the ability to testify under penalty of perjury. While stating under penalty of perjury that they have personal knowledge and can testify to facts as required by Federal Rule of Evidence 601 and 602, Debtor testifies under penalty of perjury, identified by paragraph number used in the Declaration:

- 9. The First Amended Chapter 13 Plan complies with applicable law.

There is nothing in the record establishing either of the two debtors having a legal education or other specialized, personal knowledge so as to state under penalty of perjury such legal conclusion. Rather, it appears that Debtor either signed the Declaration without reading it or has signed it with the attitude of “I say whatever my attorney tells me to say, because if I do - Then I WIN!”

11. The First Amended Plan is proposed in good faith and is not by any means forbidden by law.

Again, Debtor shows no basis of having the legal training or knowledge to provide the court with the legal conclusion that what they are doing is “not by any means forbidden by law.” Additionally, Debtor merely dictating a legal conclusion of “good faith” does not provide the court with any evidence by which the court can conclude that Debtor is acting in good faith. To the contrary, by signing this Declaration, Debtor’s good faith is put into doubt.

13. All secured creditors provided for have either accepted the plan, we will be surrendering the property securing their claims, or the plan provides to pay the creditors pursuant to section 1325(a)(5)(B).

It appears that this paragraph is merely a cut and paste of the possible alternative treatment of secured claims provided under the Bankruptcy Code. In signing this Declaration, it appears that Debtor has no idea of how the Plan provides for secured claims or what the Debtor would be committing to if such a plan was confirmed.

15. Our petition and plan were filed in good faith.

As discussed above, merely dictating a legal conclusion to the court does not provide the court with evidence to do its job and make legal conclusions (and not merely repeat what is dictated by Debtor to the court).

The need to comply with Federal Rule of Bankruptcy Procedure 9013 to have a motion state with particularity the grounds upon which the requested relief is based is not a new Rule promulgated by the Supreme Court, nor is this court requiring compliance with the Rule something new. The same is true as to a witness providing personal knowledge testimony as required under the Federal Rules of Evidence, and not merely dictating to the court findings and conclusions.

Cause exists to dismiss this case. Fortunately for Debtor, they have not invested much time and effort in this case, such that there will be little wasted in having to file a new case, if they desire to so do.

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.

**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.

-----

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 13, 2020, Dckt. 220; 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 Troy Hardin ("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. 34, 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.

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on October 16, 2020. The court computes that 33 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 October 9, 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 October 9, 2020. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Anthony Hemenes, III ("Debtor"), failed to appear at the Section 341 Meeting of Creditors.
2. Debtor is delinquent in plan payments.
3. Debtor's chapter 13 documents are incomplete.
4. Debtor is a serial filer.
5. Debtor has failed to provide tax returns.
6. Debtor has failed to provide business documents.
7. Mortgage payment is delinquent due to Debtor's failure to make plan payments timely.

## DISCUSSION

### Failed to Appear at § 341 Meeting of Creditors

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

### **Delinquent**

Debtor is \$1,429.65 delinquent in plan payments, which represents one month of the \$1,429.65 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Complete Documents Related to Petition**

Debtor has failed to properly complete the Petition documents or has left blank section within several of the following documents:

- A. Petition
- B. Form 122A,
- C. Schedule(s): A–J, and
- D. Chapter 13 Plan.

Without Debtor submitting the required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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



## Feasibility

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, mortgage payments are delinquent post-petition because trustee lacked sufficient funds to make the post-petition mortgage payments for September and October due to Debtor's failure to make plan payments or make them timely. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

## Multiple Bankruptcy Filings

This is Debtor's third recent Chapter 13 case he has attempted to prosecute *pro se*. The prior case was filed by Debtor on May 1, 2020 and dismissed on May 19, 2020 due to the failure to file the basic required documents to prosecute a Chapter 13 case: Chapter 13 Plan; Statement of Monthly Income; Schedules A/B, C, D, E, F, G, H, I, J; and the Statement of Financial Affairs. 20-22339; Ntc of Incomplete Filing and Order, Dckts. 9, 11.

Debtor's second prior case was filed on December 12, 2019 and dismissed on March 7, 2020. 19-27664. The second prior case was dismissed pursuant to the Motion of the Trustee based on a monetary delinquency in plan payments and failure to provide copies of business documents. 19-27664; Civil Minutes and Order, Dckts. 33, 34.

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 September 11, 2020. By the court’s calculation, 68 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tanya Dorene Hall (“Debtor”), has failed to file and confirm an amended plan.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on October 12, 2020. Dckt. 54. Debtor states that a confirmable amended plan will be filed and set for hearing prior to the hearing.

#### **DISCUSSION**

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. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

At the hearing, **XXXXXXXXXXXXXXXXXX**

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

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

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

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

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

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 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 continued the hearing to November 18, 2020.

##### **November 18, 2020 Hearing**

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~

## FINAL RULINGS

22. [16-27597-E-13](#) RUBEN/HERMINA HERNANDEZ MOTION TO DISMISS CASE  
[DPC-1](#) Mary Ellen Terranella 9-23-20 [20]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the November 18, 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 November 3, 2020, Dckt. 34; 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 Ruben Calderon Hernandez and Hermina Hernandez (“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. 34, 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 November 18, 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 October 14, 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). 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, Craig S. Makishima (“Debtor”), is delinquent in plan payments.

#### DISCUSSION

Debtor is \$137,076.80 delinquent in plan payments, which represents multiple months of the \$1,428.80 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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



**Final Ruling:** No appearance at the November 18, 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 September 17, 2020. The court computes that 62 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 10, 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 November 18, 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 October 21, 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 the debtor, Agustin Manriquez Hinojosa (“Debtor”), has failed to file an amended plan.

#### **DEBTOR’S NON-OPPOSITION**

Debtor filed a Non-Opposition to Trustee’s Motion to Dismiss on November 4, 2020 informing the court that Debtor has been unable to get his tax returns completed and so will re-file once the taxes have been filed. Dckt. 97.

#### **DISCUSSION**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on September 3, 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.

27. [20-23404-E-13](#)      **KENNETH SMITHOUR**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Mary Ellen Terranella**                      **10-21-20 [49]**

**Final Ruling:** No appearance at the November 18, 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 November 13, 2020, Dckt. 62; 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 Kenneth Lee Smithour (“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. 62, 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.



## **Debtor's Declaration**

On July 29, 2020, Debtor filed a Declaration testifying that she has been financially affected by COVID-19 as she was furloughed and at the time she was to start new employment she was exposed to COVID-19 and is now on self quarantine. Dckt. 80, at ¶ 4. Debtor also asserts that she has been making partial payments to Trustee. *Id.*, at ¶ 5. Debtor requests additional time to file a new plan and start new employment; she will also continue making partial payments to Trustee. *Id.*, at ¶ 7.

## **August 5, 2020 Hearing**

At the hearing, counsel reported that Debtor advised him that Debtor's children tested positive that has complicated the situation.

The Trustee reported that Debtor has made several partial cure payments and requested that the hearing be continued.

## **September 9, 2020 Status Report**

Trustee filed a Status Report on September 9, 2020 again requesting dismissal of the case on the basis that no additional payments have been made since June 23, 2020 and that no modified plan has been proposed to address the two ongoing mortgages and a vehicle payment. Dckt. 85.

## **November 18, 2020 Hearing**

Debtor has filed a Modified Plan (Dckt. 90) and Motion to Confirm (Dckt. 87) to address the defaults. From the court's preliminary review, it appears that the Motion states grounds with particularity upon which relief is based and that the Declaration in support (Dckt. 89) states personal knowledge testimony in support of the Motion to Confirm.

Given Debtor's active prosecution of confirmation of a Plan, the Motion is denied without prejudice.

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

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

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

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

**Final Ruling:** No appearance at the November 18, 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 September 11, 2020. By the court’s calculation, 68 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, Porfirio Lopez (“Debtor”), failed to file an amended plan.

#### **DISCUSSION**

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 23, 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.

30.    [20-21949-E-13](#)    **MARIA MORALES**    **MOTION TO DISMISS CASE**  
      [DPC-2](#)                **Eric Schwab**                **9-11-20 [34]**

**Final Ruling:** No appearance at the November 18, 2020 hearing is required.

-----

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

**Final Ruling:** No appearance at the November 18, 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 September 23, 2020. By the court’s calculation, 56 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, Kevin Brandon Bridges (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S NON-OPPOSITION**

Debtor filed a Non-Opposition on October 15, 2020. Dckt. 106.

#### **DISCUSSION**

Debtor is \$74,500.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment and a lump sum payment of \$70,000.00 due in December 2019. 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.

32. [20-23454-E-13](#)      **JUANETHEL ALEXANDER**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Matthew Mellen**                      **10-21-20 [27]**

**Final Ruling:** No appearance at the November 18, 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 October 21, 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 hearing on the Motion to Dismiss is continued to 2:00 p.m. on November 24, 2020, to be conducted in conjunction with Debtor’s Motion for the appointment of a guardian *ad litem* in this bankruptcy case for Debtor.**

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



## **DISCUSSION**

### **Delinquent**

Debtor is \$1,040.00 delinquent in plan payments, which represents less than one month of the \$1,320.00 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 September 15, 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).

### **Motion to Appoint a Personal Representative**

On October 26, 2020, Debtor filed a Motion to Appoint a Next Friend, namely Lizabeth Griffin as the Next Friend. Dckt. 31. At the Meeting of Creditors, Trustee believed Debtor needed to have Next Friend appointed to assist Debtor as she is 78 years old and after having suffered a stroke, Debtor is having problems with her memory and mental capacity. *Id.*, ¶ 2-3. Ms. Griffin is Debtor's cousin and has been assisting Debtor since 2012 and is familiar with Debtor's financial affairs. *Id.*, ¶ 5-6. The motion has been set for hearing at 9:00 a.m. on November 24, 2020.

**Final Ruling:** No appearance at the November 18, 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 September 23, 2020. By the court’s calculation, 56 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, Daniel Bryan Butler (“Debtor”), is delinquent in plan payments.

#### DISCUSSION

Debtor is \$20,783.00 delinquent in plan payments, which represents multiple months of the plan payment. The Plan calls for monthly plan payments of \$6,171.00 through January of 2019, followed by monthly plan payments of \$1,873.00 per month. Dckt. 56. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13

Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

34. [19-24768-E-13](#)      **LARRY BELLANI**      **MOTION TO DISMISS CASE**  
[DPC-5](#)                      **Michele Poteracke**                      **10-21-20 [137]**

**Final Ruling:** No appearance at the November 18, 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 October 21, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Larry Bellani (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an amended plan.

**DEBTOR’S NON-OPPOSITION**

Debtor filed a Non-Opposition on November 3, 2020. Dckt. 141. Debtor agrees with the dismissal and will cause to be an ex-parte regarding disbursement of funds currently held in trust per prior

order of the court.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,139.62 delinquent in plan payments, which represents multiple months of the \$380.00 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 21, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the November 18, 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 October 21, 2020. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Roxanne Marie Brock (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an amended plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$320.00 delinquent in plan payments, which represents one month of the \$320.00 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



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.

37. [19-24880-E-13](#)      **MICHAEL/SANDRA BOYD**      **CONTINUED MOTION TO DISMISS**  
[DPC-3](#)                      **Daniel Griffin**                      **CASE**  
7-14-20 [56]

**Final Ruling:** No appearance at the November 18, 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 November 3, 2020, Dckt. 86; 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 Michael Eugene Boyd and Sandra Danyelle Palen Boyd (“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. 86, 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 November 18, 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 October 14, 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 dismissed without prejudice.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on November 13, 2020, Dckt. 66; 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 Laurie Marie Stefanelli (“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. 34, 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.