

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

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

**January 5, 2022 at 9:00 a.m.**

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1.	<a href="#"><u>17-22214-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>RICHARD CRABTREE</b> <b>Douglas Jacobs</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>9-15-21 [63]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2021. 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).

<b>The Motion to Dismiss is <span style="color:red">XXXXXXXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Richard L. Crabtree ("Debtor"), is delinquent in plan payments.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on October 4, 2021. Dckt. 67. Debtor states the delinquency will be cured by the middle of November 2021.

**DISCUSSION**

**Delinquent**

Debtor is \$3,776.00 delinquent in plan payments, which represents multiple months of the

\$1,888.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee reports that Debtor is still delinquent, but agreed to a continuance in light of the medical issue

Trustee also wants to note that the Stipulation filed on July 13, 2017 is inconsistent with the Proof of Claim filed by the Internal Revenue Services (“IRS”). Dckt. 45, Proof of Claim 2-2. Trustee contends that if the numbers are inconsistent and increased the amount being paid to the IRS, then the Plan will run longer than the required 60 months.

Given the age of this case, it being filed in 2017, the Trustee agreed to a continuance to allow Debtor the opportunity to address the default.

### **November 16, 2021 Hearing**

At the hearing, counsel for the Debtor states that Debtor has caught up on some payments, but is still one down. The Parties agreed, in light of the age of the case and efforts being made by Debtor, to a continuance of the hearing.

### **December 14, 2021 Hearing**

At the December 14, 2021 continued hearing, the Trustee reported that the Debtor is still delinquent, and is not aware of a motion to modify being filed. Counsel for Debtor addressed the Debtor’s efforts to cure the default, headway made, and requested a further continuance. The Trustee concurred with a continuance.

### **January 5, 2022 Hearing**

A review of the Docket on December 31, 2021, disclosed that no further or supplemental pleadings have been filed. Debtor has not documented that delinquency has been cured.

At the hearing, **XXXXXXXXXX**

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

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

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

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

**APPEARANCE OF PETER NELSON, ESQ., COUNSEL FOR DEBTORS  
REQUIRED FOR HEARING  
TELEPHONIC APPEARANCE PERMITTED**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 6, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Nelson A Madsen and Sharon L Burns ("Debtor"), is delinquent in plan payments and no plan is currently pending after objections to confirmation of the plan were sustained at the hearing on October 12, 2021.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 27, 2021. Dckt. 46. Debtor states the medical issues have caused setbacks in payments. Debtor states they have made higher amended plan payments since September 2021. Debtor states they filed an Amended Plan as Exhibit B, but no such Plan has been attached. Dckt. 46.

The court notes that the "Opposition" is an amalgamation of an Opposition, a Declaration appended thereto, and an Exhibit appended thereto. Motions, oppositions, declarations, and exhibits (which may be combined into one exhibit pleadings) all must be separately filed as provided in the Local Bankruptcy Rules. L.B.R. 9004-2(c)(1), 9014-1(d)(1).

The Opposition portion of the pleading states that Debtor's counsel has filed an Amended Plan and a copy is attached as Exhibit B. There is no Exhibit B attached to the Opposition-Declaration-Exhibits pleading.

The court's December 31, 2021 review of the Docket for this case disclosed that no amended plan, motion to confirm amended plan, notice of hearing on such motion, or evidence in support of such a motion have been filed since the court's October 21, 2021 sustaining of the Objections to Confirmation of Debtors' Plan. Civ. Minutes and Orders; Dckts. 34-37.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,946.96 delinquent in plan payments, which represents less than one of the \$2,319.87 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 sustaining creditor's objections to Debtor's original plan on October 12, 2021. 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).

This Bankruptcy Case was filed on August 3, 2021. Debtors provide testimony of significant real life events that beset them during the past five months. However, the evidence Debtors provided is that those events did not impede their ability to sent significant amounts of money to the Trustee without an amended plan being filed.

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

It appears that Debtors have fallen into a "comfortable" bankruptcy dysfunctionality of having the benefits of bankruptcy and the automatic stay, but no plan terms binding then to a committed performance of a plan.

Debtors appear to need to benefit of a "fresh Chapter 13 start," if they and their attorney conclude that Debtors can propose and confirm a plan that complies with the Bankruptcy Code. Debtor's have no prior bankruptcy cases in this District, thus it would appear that Debtors could file a new case, obtain an 11 U.S.C. § 362(c)(3)(B) extension of the stay as to the Debtors (to the extent such would be necessary), have a lump sum (the return of the monies paid into the Trustee for this case upon dismissal of this case) to kick off a new plan in the new case, and sail forward, unburdened by the five months of non-productive prosecution of this case.

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

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

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

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

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

3.     [18-20228-E-13](#)     **ROBERT/DONNA SEYMOUR**     **MOTION TO DISMISS DONNA RAE**  
          [DPC-4](#)           **Mark Briden**                   **SEYMOUR**  
  **12-17-21 [108]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 14, 2021. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

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<p><b>The Motion to Dismiss is granted, and the case is dismissed as to the late Debtor Donna Rae Seymour only, and the cash shall proceed as to the Co-Debtor Robert Seymour.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis

that:

1. the debtor, Donna Rae Seymour (“Debtor”), has died and no Notice of Death or Omnibus motion has been filed.
2. Debtor paid \$30,000.00 by cashier’s check to the Trustee, which was posted on November 29, 2021. Debtor’s Attorney has been advised by the Trustee that more action was needed but has not acted. The Trustee does not believe he can seek a minor modification to allow the \$30,000 lump sum payment where one of the Debtors is deceased without the approval of the Court.

## **DISCUSSION**

### **Death of One Debtor**

Under 11 U.S.C. § 1016, a Chapter 13 case may be dismissed upon death of a debtor. This is largely due to Chapter 13 plans being dependent on the debtor’s future earnings. 9 Collier on Bankruptcy P 1016.04 (16th 2021). However, if further administration is possible and in the best interest of the parties, the case may proceed and concluded in the same manner, so far as possible, as though death or incompetency had not occurred, with the court appointing a personal representative successor to the late debtor.. 11 U.S.C. § 1016.

Here, further administration is possible as to Debtor Robert Cecil Seymour. As such, Debtor Donna Rae Seymour is to be dismissed and the bankruptcy case shall proceed as to Mr. Seymour only.

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

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

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

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

**IT IS ORDERED** that the Motion to Dismiss Debtor Donna Rae Seymour is granted, and the bankruptcy case shall proceed as to Debtor Robert Cecil Seymour only.

**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 December 16, 2021. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: Installment Payment in the amount of \$79 due by 12/9/2021.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
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The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: Installment Payment in the amount of \$79 due by 12/9/2021.

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

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

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

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

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

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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 22, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXXXXXXX.**

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

1. The debtors, Robin Arlene and Thomas Scott Harland ("Debtor"), are delinquent in plan payments under the confirmed plan.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 5, 2021. Dckt. 87. Debtor Robin Arlene Harland died on or about Tuesday, September 23, 2021. Dckt. 86. Debtor, Thomas Harland, is determining survivor's benefits for himself, and requests a 90 day continuance. Debtor intends to remain current while determining if a modification or other plan is appropriate.

## DISCUSSION

### Delinquent

Debtor is \$8,448.00 delinquent in plan payments, which represents multiple months of the \$3,582.00 plan payment. Before the hearing, another plan payment will be due, bringing the total due to bring the plan current by the date of the hearing to \$12,030.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee agreed to a continuance to allow the surviving debtor to obtain the appointment of a representative for the late debtor and continue in the prosecution of this joint case.



## Debtor's Supplemental Opposition

On December 21, 2021, Debtor Thomas Scott Harland filed a Supplemental Opposition to Motion to Dismiss. Dckt. 91. Debtor informs the court that after consulting with the Trustee's office, he decided to draft a new Chapter 13 Plan. Debtor will not be able to confer with their counsel until January 3, 2022. They will hope to have a new plan or motion for hardship discharge filed before January 5, 2022. Dckt. 91.

### January 5, 2022 Hearing

At the hearing, ~~XXXXXXXXXX~~

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

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

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

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

6. [21-23539-E-13](#)      **DEREK WOLF**      **MOTION TO DISMISS CASE**  
[DPC-1](#)              **Pro Se**              **11-22-21 [\[29\]](#)**

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

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Local Rule 9014-1(f)(1) Motion—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 November 22, 2021. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Derek L Wolf (“Debtor”), failed to appear at the First Meeting of Creditors. The Trustee does not have sufficient information to determine if the Plan is suitable for confirmation under 11 U.S.C. §1325. Therefore, the meeting has been continued to January 13, 2022 at 1:00 p.m
2. Plan has not been served on all interested parties and no Motion to Confirm Plan is pending. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors
3. No payment advices have been received from the sixty (60) days prior to filing.
4. No tax returns have been provided to the trustee for the most recent pre-petition tax year.
5. Debtor has failed to provide two (2) years of tax returns, six (6) months of profit and loss statements, six (6) months of bank statements, proof of license and insurance or written statements that no such documentation exists.

## **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).

### **Never Noticed Initial Plan**

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). 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. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

### **Status of Case**

At the recent hearing on a Motion for Relief From the Stay in this Case (which Debtor appeared after the hearing had been concluded due to telecommunications suffered by Debtor that day), the court and Debtor discussed the need for Debtor to obtain counsel to effectively prosecute this case and any rights Debtor may have concerning his home mortgage. Debtor's pro se efforts in 2020 and 2021 have not been successful.

### **Trustee's Status Report**

On December 29, 2021, Trustee filed a status report stating Debtor is still \$1,500.00 delinquent in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements. Dckt. 39. Trustee still requests the court grant the Motion.

### **January 5, 2022 Hearing**

At the hearing, **XXXXXXX**

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

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

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

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

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

~~dismissed.~~

7.	<a href="#"><u>21-23744</u></a> -E-13	CARLOS PALACIOS-CAZARES Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 12-6-21 <a href="#"><u>[30]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 8, 2021. The court computes that 28 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: the amount of \$79.00, due on 12/1/21.

**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: the amount of \$79.00, due on 12/1/21.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 6, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, David Matthew Windmiller and Donna Laura Windmiller ("Debtor"), no plan is currently pending and 521 documents are still not provided.

## **DEBTOR'S REPLY**

Debtor filed a Reply on December 22, 2021. Dckt. 26. Debtor states they will have an Amended Plan filed before the January 5, 2022 hearing. Additionally, the correct 521 Documents were uploaded to the Document Portal on December 22, 2021.

## **DISCUSSION**

### **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 October 20, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). 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).

At the hearing, ~~XXXXXXXXXX~~

~~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 an order substantially in the following form holding that:~~

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

1. the debtor, Betty Bayongan Mustard ("Debtor"), is delinquent in payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 54. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,220.00 delinquent in plan payments, which represents multiple months of the \$1,610.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

10. [17-22651](#)-E-13      **MARIO/CHRISTINE BORREGO**      **MOTION TO DISMISS CASE**  
[DPC-6](#)      **Mark Wolff**      **12-8-21 [137]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

1. the debtor, Mario Manuel Borrego and Christine Joy Borrego (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 22, 2022. Dckt. 141. Debtor states they expect the delinquency to be cured prior to the hearing date. Dckt. 141.

## **DISCUSSION**



## Delinquent

Debtor is \$2,377.96 delinquent in plan payments, which represents multiple months of the \$1,025.00 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).

## Trustee's Status Report

Trustee filed a Status Report on December 29, 2021. Dckt. 143. Trustee states Debtor has a pending electronic payment that if received brings Debtor current.

At the hearing, ~~XXXXXXXXXX~~

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Eric Ali'i Fueva and Rosalia Theresa Inez Fueva ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S REPLY**

Debtor filed a Reply on December 21, 2021. Dckt. 101. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,581.60 delinquent in plan payments, which represents multiple months of the \$3,584.30 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

12. [21-20752-E-13](#)      **DOUGLAS/VALERIE LUTES**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter Macaluso**      **12-8-21 [81]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Douglas Matthew Lutes and Valerie Lynn Lutes (“Debtor”), is delinquent in payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 85. Debtor states they will file a new Chapter 13 Plan on or before the hearing date.

## **DISCUSSION**

## **Delinquent**

Debtor is \$45,586.24 delinquent in plan payments, which represents multiple months of the \$4,696.24 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor states that the money to cure the Plan is to come from an inheritance that is being delayed. Declaration, Dckt. 86.

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

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

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

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

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

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

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 November 10, 2021. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: the amount of \$78.00, due on 12/2/21.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
--

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: Second Installment Payment in the amount of \$78 due by 11/2/2021 and Third Installment Payment in the amount of \$78 due by 12/2/2021.

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

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

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

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

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 December 9, 2021. The court computes that 27 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: the amount of \$78.00, due on 12/2/21, has not been paid.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: Second Installment Payment in the amount of \$78 due by 11/2/2021 and Third Installment Payment in the amount of \$78 due by 12/2/2021.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Aracely Rivas ("Debtor"), is delinquent in plan payments.

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

Debtor filed an Opposition on December 21, 2021. Dckt. 96. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$758.00 delinquent in plan payments, which represents multiple months of the \$185.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

16. [21-22161](#)-E-13      **NADINE/STEVEN MUENCH**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter Cianchetta**      **12-6-21 [55]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 6, 2021. 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).

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

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

1. the debtor, Nadine Ann Muench and Steven Edwin Muench (“Debtor”), has no plan pending and they are unsure if Debtors have sufficient funds.

#### **Debtor’s “New Plan”**

Debtor filed a “new plan” on December 22, 2021. Dckt 61. However, the plan and all supporting pleadings appear to be a duplicate filing from the previous amended plan that was filed on October 13, 2021 and denied by court order November 23, 2021. Docket Control No. PLC-1. The denial was based on failure of Debtor to provide evidence establishing that the Plan was feasible. The



court is unsure if Debtor intended to file a separate plan and inadvertently filed the duplicate.

### **Debtor's Reply**

On December 27, 2021, Debtor filed a reply to Trustee's Motion. Dckt. 64. Debtor states they filed an amended plan, as noted above. Additionally, it states that a more detailed declaration of Sandie Howell has been filed in support of the Motion to Confirm the Amended Plan.

However, a review of the court's docket discloses that the only declaration filed in support of confirmation of the Amended Plan is that of the two debtors. Dckt. 62. The testimony by Debtor in the Declaration as to Ms. Howell's contribution for the funding of the Plan consists of:

5. Nadine Muench's mother, Sandie Howell, has agreed to pay monthly on behalf of the Debtors.

Declaration, ¶ 5; Dckt. 62.

### **Trustee's Status Report**

Trustee requests that the Trustee's Motion to Dismiss be continued and heard in conjunction with the Debtor's Motion Confirm the Plan on February 15, 2022.

### **DISCUSSION**

Though the Chapter 13 Trustee requests that the court continue the hearing on the Motion to Dismiss to mid-February so it can be heard in conjunction with the Motion to Confirm, the court is confused why such a continuance is proper.

No Declaration or Sandie Howell has been filed in support of the Motion to Confirm the Amended Plan. In denying the prior Motion to Confirm this Plan, the court expressly addressed with Debtor and counsel that merely having a third-party say, "Yep, I'll make the Debtor's payments of almost \$2,000 a month," but not showing an ability to do so was not credible evidence of feasibility.

Here, while stating a more "detailed" declaration has been filed, no "detailed" declaration of Sandie Howell has been filed.

Debtor has now had seven months to prosecute this case and confirm a plan. Debtor has been unable to do so. It appears that Debtor is in need of a dismissal reset, and then diligently prosecute a new case, if such is possible.

In their Declaration (Dckt. 62) Debtor admits that Debtor cannot fund the Plan and that Debtor will have to be given funds from a third-party to cover 63.8% of the \$1,920.55 required plan payment. Debtor provides no evidence of such funding being available in connection with this bankruptcy case. Additionally, no Supplemental Schedules I and J have been filed showing current income and expenses.

In the most recent Supplemental Schedules I and J Debtor states under penalty of having \$4,634 in take home income, and (\$4,026) in expenses. Dckt. 48

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

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

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

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

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

17. [19-24362-E-13](#)      **RAFAEL/ELSA MARTINEZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Douglas Jacobs**      **12-8-21 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Rafael J. Martinez and Elsa Martinez (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 20, 2021. Dckt. 34. Debtor states the delinquency will be cured prior to the hearing date and that two payments of \$1,180.00 have not yet been applied to the balance. Debtor states these payments were submitted on December 11, 2021 and December 10, 2021.

At the hearing, ~~XXXXXXXXXX~~

## DISCUSSION

### Delinquent

Debtor is \$3,454.00 delinquent in plan payments, which represents multiple months of the \$1,178.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Monica Margarita McDonald ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on December 15, 2021. Dckt. 23. Debtor states they are now "coming current" on their payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,100.00 delinquent in plan payments, which represents multiple months of the \$550.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to come current 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 an order substantially in the following form holding that:

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

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

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

19.    [19-27862-E-13](#)        **SHAVINA/DONALD THOMAS**        **MOTION TO DISMISS CASE**  
         [DPC-4](#)                    **Richard Jare**                    **12-8-21 [141]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1.        the debtor, Shavina Denise Thomas and Donald Wayne Thomas (“Debtor”), is delinquent on payments and under 11 U.S.C. §1322(d), the plan will complete in 111 months which exceeds the maximum amount of time allowed.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 22, 2021. Dckt. 145. Debtor states the delinquency will be cured prior to January 24, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$600.00 delinquent in plan payments, which represents multiple months of the \$300.00 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).

### **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee's calculations, Debtor's Plan will complete in 111 months, instead of 60 months pursuant to the confirmed plan. This is due to Debtor estimating priority claims at \$100.00, when the filed claims total \$14,545.51. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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 conditionally granted, and the case will be dismissed if Debtor in not current on all plan payments as of January 10, 2022.**

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

1. the debtor, DARRYL WAYNE WILLIAMS ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on December 17, 2021. Dckt. 24. Debtor states the delinquency will be mailed by January 3, 2022. However, Debtor acknowledges that the cure may not post until after the hearing. Therefore, Debtor requests a conditional order that the case not be dismissed as long as the payment is received by January 10, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,210.00 delinquent in plan payments, which represents multiple months of the \$340.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Based on the foregoing, cause exists to dismiss this case. However, the court takes Debtor's conditional request under consideration. At the hearing, ~~XXXXXXXXXX~~

~~As such, the Motion to Dismiss is conditionally granted, and the case will be dismissed if Debtor is not current on all plan payments as of January 10, 2022.~~

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

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

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

~~**IT IS ORDERED** that the Motion to Dismiss is conditionally granted, and the case will be dismissed if Debtor is not current on all plan payments as of January 10, 2022.~~

21.	<a href="#">21-22663-E-13</a> 21 thru 22	<b>ROBERT MACBRIDE</b> Pro Se	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> 11-29-21 <a href="#">[50]</a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 1, 2021. The court computes that 35 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: the amount of \$77.00, due on 11/22/21.

<b><del>The Order to Show Cause is sustained, and the case is dismissed.</del></b>
--

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

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



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

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

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

22. [21-22663](#)-E-13      **ROBERT MACBRIDE**      **CONTINUED MOTION TO DISMISS**  
[DPC-3](#)      **Pro Se**      **CASE**  
9-21-21 [\[35\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Office of the United States Trustee on September 21, 2021. 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).

<b>The Motion to Dismiss is <span style="color: red;">XXXXX</span>.</b>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Robert Stuart MacBride ("Debtor"), is delinquent in plan payments.

### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on October 6, 2021. Dckt. 39. Debtor states the delinquency will be cured by November 1, 2021. Further, Debtor states that he has been dealing with unexpected time off from work due to his employer's family members falling ill. Debtor also had a surgery set on October 6, 2021 due to an eye injury. Debtor states that even with these setbacks he believes he can get the Plan current by November 1, 2021.

Debtor states that he is working with family and friends to provide financial assistance, which he states will not be in the form of incurring additional debt.

## **DISCUSSION**

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

Debtor did not commence making plan payments and is \$3,174.05 delinquent in plan payments, which represents a part of one month of the \$3,228.62 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

Debtor has had a series of five bankruptcy cases (including the current case) pending in this court since 2016. Those prior cases have all been dismissed.

It appears that Debtor is attempting to save his residential property in which he computes having more than \$200,000 in equity. Unfortunately, it appears that he is slipping further and further into arrears.

At the hearing, Debtor reported that he was still working to prosecute this case. The court addressed with Debtor the need for counsel, especially in light of Debtor's multiple Chapter 13 attempts which have failed, and the ability to pay such counsel through the bankruptcy plan. Debtor reported that he will consider employing counsel.

Nothing further has been filed by Debtor in prosecuting this case.

Due to Courthouse access issues due to the SMUD electric transformer explosion and the continuing loss of power to the Federal Courthouse, the court continues the hearing.

### **Trustee's Status Report**

On December 29, 2021, Trustee filed a status report informing the court that Debtor still has not made Plan payments since the case commenced, Debtor has not hired counsel, and there is no current Chapter 13 Plan filed. Dckt. 54. Trustee still requests this motion be granted.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, consideration of Courthouse access issues due to the SMUD electric transformer explosion and the continuing loss of power to the Federal Courthouse evidence, and good cause appearing,

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

23. [18-24572-E-13](#) **ROBERTA WILLIAMS** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mikalah Liviakis** **12-8-21 [22]**

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

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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 December 8, 2021. 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, Roberta Kaye Williams ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,885.00 delinquent in plan payments, which represents multiple months of the \$745.00 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).

Though Debtor is now in the forty-first month of this case no opposition has been filed. At the hearing, **XXXXXX**

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

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

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

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

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

24. [17-26579-E-13](#)      **DAVID/CONNIE KELLER**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Peter Macaluso**                      **12-8-21 [153]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, David Leroy Keller and Connie Jane Keller (“Debtor”), is

delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 157. Debtor states they will file a new plan on our before the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,658.02 delinquent in plan payments, which represents multiple months of the \$2,588.02 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 10, 2021. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: the amount of \$79.00, due on 11/3/21.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: the amount of \$79 due by 11/3/2021 and the Second Installment Payment in the amount of \$78 due by 12/3/2021

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

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

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

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

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 10, 2021. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: the amount of \$78.00, due on 12/3/21, has not been paid.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: the amount of \$79 due by 11/3/2021 and the Second Installment Payment in the amount of \$78 due by 12/3/2021

The court having dismissed this bankruptcy case by the previous matter, the Order to Show Cause is discharged as moot.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot as the case has previously been 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 December 8, 2021. 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).

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

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

1. the debtor, Danielle Nicole Delgado ("Debtor"), is delinquent in plan payments.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 20, 2021. Dckt. 151. Debtor states the delinquency will be cured prior to the hearing date. Debtor claims they made a payment, through TFS, on or about December 9, 2021 and December 17, 2021, both for \$280.00. Additionally, Debtor had a payment scheduled for December 25, 2021 in the amount of \$480.00 through TFS.

At the hearing, **XXXXXXXXXX**

## DISCUSSION

### Delinquent

Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the \$480.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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





Debtor filed a Response on November 23, 2021. Dckt. 34. Debtor states they fell behind due to unexpected expenses from a death in the family. Debtor states the delinquency will be cured by December 15, 2021.

## **DISCUSSION**

### **Delinquent**

Debtor is \$660.00 delinquent in plan payments, which represents multiple months of the \$330.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. 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).

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

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

1. the debtor, Kevin Jeffrey Macy and Kristy Ann Macy ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 113. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,050.00 delinquent in plan payments, which represents multiple months of the \$1,525.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

30.     [21-22590-E-13](#)     **KENNETH SMITHOUR**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **Mary Ellen Terranella**     **12-1-21 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 1, 2021. 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).

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

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

1.           the debtor, Kenneth Lee Smithour (“Debtor”), is delinquent in plan payments and there is no plan pending.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 22, 2021. Dckt. 33. Debtor states they will file an amended plan prior to the hearing.

#### **DISCUSSION**

## **Delinquent**

Debtor is \$16,597.58 delinquent in plan payments, which represents multiple months of the \$8,084.86 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 / Delay of Confirmation**

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 October 18, 2021. 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, except that they are a nurse whose income has fluctuated over the past year. 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 an order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Carolina DeGuzman Pena "Debtor"), is delinquent in plan payments and their plan is overextended.

## **COUNSEL'S DECLARATION**

Debtor's Counsel, Matthew J. Gilbert, filed a Declaration on December 21, 2021. Dckt. 35. Counsel states Debtor claims they already made one of the delinquent payments and would be making up the rest of the delinquency by December 31, 2021.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,124.96 delinquent in plan payments, which represents multiple months of the \$3,076.67 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee's calculations, Debtor's Plan will complete in 65 months, instead of 60 months pursuant to the confirmed plan. This is due to Debtor's overall delinquency. The

Plan would be feasible if the plan payments pursuant to the confirmed plan were brought current. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 21, 2021. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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**The Motion to Dismiss and/or Motion to Reconvert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

This Motion to Dismiss and/or Convert the Chapter 13 bankruptcy case of Michael Mark Panopio and Caroline Macaraeg Panopio ("Debtor") has been filed by Chapter 13 Trustee, David P. Cusick, ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds:

**No Plan Pending**

To date, a Plan has not been filed or set for hearing. Without Debtor submitting the required document, 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 Social Security Number**

Debtor has not provided Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). 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).

### **Negative Monthly Income**

According to Schedules I & J, Debtors net monthly income is negative which shows they cannot fund any Chapter 13 Plan or be eligible to be a Debtor under 11 U.S.C. § 109(e).

### **Failure to Disclose Attorney's Fees**

Trustee filed a Motion to Dismiss based on Debtor's failure to disclose compensation regarding attorney's fees. Without Debtor submitting the required information, they are in violation of 11 U.S.C. § 329.

### **Limited Non-Exempt Assets**

Schedules A/B and C were amended, (DN 24), and it appears that there are nonexempt assets for \$6,494.05, which includes a 401(k) in the amount \$6,375.00 which, if Debtors amend Schedule C again, could be fully exempt, thereby only leaving \$119.50 in cash and bank accounts as non-exempt assets.

### **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: “[f]irst, it must be determined that there is ‘cause’ to act[;] [s]econd, once a determination of ‘cause’ has been made, a choice must be made between conversion and dismissal based on the ‘best interests of the creditors and the estate.’” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter

7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## DISCUSSION

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The court notes Debtors retained new counsel in November, 2021. Debtor’s Status Report prepared by the new counsel dated November 10, 2021, references substantial shortcomings by Debtor’s prior counsel, including grossly inaccurate Schedules and Debtor never having signed documents filed with the court. There may be significant investigation and action by the Chapter 7 trustee and U.S. Trustee. As such, under the totality of circumstances, the court finds it is in the best interest of the Debtor, creditors, and the bankruptcy estate to reconvert this case to a Chapter 7.

This may well necessitate Debtor having to amend every pleading they have already paid their prior attorney to prosecute their bankruptcy case as provided under Federal Law and the Federal Rules enacted by the United States Supreme Court.

The Motion is granted, and the case is converted to a case under Chapter 7.

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

**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

# FINAL RULINGS

33. [21-23803](#)-E-13      ESTATE OF ALTHA RUTH DAVIS      ORDER TO SHOW CAUSE - FAILURE  
Pro Per      TO PAY FEES  
11-19-21 [16]  
DEBTOR DISMISSED: 11/22/2021

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se* and Chapter 13 Trustee as stated on the Certificate of Service on November 19, 2021. The court computes that 47 days' notice has been provided.

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

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on November 22, 2021 (Dckt. 20), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the January 5, 2022 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 December 6, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Lee Ann Newton (“Debtor”), is delinquent \$2,500.00. Debtor must pay \$5,200.00 by the date of hearing to be current.
2. No Plan is Pending

## DISCUSSION

### Delinquent

Debtor is \$2,500.00 delinquent in plan payments, which represents less than a month of the \$2,700.00 Plan payments. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### 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 October 13, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

35.	<a href="#"><u>21-23510</u></a> -E-13 35 thru 36	MUSTAPHA CHAM Nima Vokshori	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 12-13-21 <a href="#"><u>[51]</u></a></b>
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**Final Ruling:** No appearance at the January 5, 2022 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 December 15, 2021. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: Second Installment Payment in the amount of \$78.00 due by 12/6/2021.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
---

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

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

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

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

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

36. [21-23510-E-13](#)      **MUSTAPHA CHAM**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Nima Vokshori**      **12-1-21 [47]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 1, 2021. 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.

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

1. the debtor, Mustapha A. Cham (“Debtor”), is delinquent \$230.00 in Plan payments.
2. Debtor is ineligible for bankruptcy as the court granted a voluntary dismissal of Debtor’s previous bankruptcy case on August 20, 2021.

3. Trustee is missing Coinbase and Binance crypto account financial statements and records.

## **DISCUSSION**

### **No Plan Payments Made / Failed to Commence Plan Payments**

Debtor did not commence making plan payments and is \$230.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

### **Ineligible**

Pursuant to 11 U.S.C. § 109(g), no individual shall be a bankruptcy debtor if at any time in the preceding 180 days, the debtor requested and obtained a by voluntary dismissal following the filing of a request for relief from the automatic stay provided under 11 U.S.C. § 362. As Debtor previously filed for dismissal (No. 21-22079, Dckt. 37) after a creditor, OP Eleven Hundred Owner, LLC, filed and was granted relief from automatic stay (No. 21-22079, Dckt. 32) and the case was dismissed on August 20, 2021 (No. 21-22079, Dckt. 47), Debtor is ineligible for bankruptcy for 180 days from August 20, 2021. As such, Debtor is not eligible for the protections of bankruptcy at this time.

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

Debtor has failed to timely provide Trustee with business documents including Coinbase and Binance crypto account financial statements and records. Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the January 5, 2022 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 October 29, 2021. The court computes that 68 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: Installment Payment in the amount of \$79 due by 10/22/2021.

**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 subsection of the Order to Show Cause has been cured.

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

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

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

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



**Final Ruling:** No appearance at the January 5, 2022 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 December 7, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Mavian Leon Neal and Rosanne Funtanilla Neal (“Debtor”), is delinquent \$4,800.00 in plan payments. Additionally, no current plan is pending.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,800.00 delinquent in plan payments, which represents multiple months of the \$2,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Prior Plan Denied, 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 14, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

39.	<a href="#"><u>19-26529-E-13</u></a> <a href="#"><u>DPC-3</u></a>	<b>PAUL WILSON AND JESSICA MAINVOILLE-WILSON Matthew DeCaminada</b>	<b>CONTINUED MOTION TO DISMISS CASE 9-22-21 <a href="#"><u>[93]</u></a></b>
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**Final Ruling:** No appearance at the January 5, 2022 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 December 29, 2021, Dckt. 115; 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 Paul Wilson and Jessica Lucia Mainvoille-Wilson ("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. 115, 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.

40.	<a href="#"><u>20-23835-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>ROYLEE/FLORENCE</b> <b>WOOLFORD</b> <b>Mikalah Liviakis</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>9-22-21 [43]</b>
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**Final Ruling:** No appearance at the January 5, 2022 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 December 29, 2021, Dckt. 76; 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 Roylee Woolford and Florence Maureen Woolford (“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. 76, 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.

41. [21-23643](#)-E-13      **GARY SHREVES**  
   **Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-4-21 [12]**

**DEBTOR DISMISSED: 11/8/2021**

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 6, 2021. The court computes that 60 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the filing fee and other fees prescribed by 28 U.S.C. § 1930(a) and (b) or an application for permission to pay fees in installments pursuant to Federal Rule of Bankruptcy Procedure 1006(b). The amount of the fees due in this case is: \$313.00.

<p><b>The Order to Show Cause is discharged as moot.</b></p>
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The court having dismissed this bankruptcy case by prior order filed on November 8, 2021 (Dckt. 17), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$6,400.00 delinquent in plan payments, which represents multiple months of the \$3,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

hearing.

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

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

43.     [19-27259-E-13](#)     **MICAH/TINA METZ**     **MOTION TO DISMISS CASE**  
         [DPC-3](#)             **Bruce Dwiggin**             **12-8-21 [56]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1.            the debtor, Micah Sean Metz and Tina Marie Metz (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

## Delinquent

Debtor is \$2,040.00 delinquent in plan payments, which represents multiple months of the \$680.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

44.	<a href="#">21-23160</a> -E-13	<b>REGINALD/NICHELLE NICHOLS Thomas Amberg</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-8-21 <a href="#">[34]</a></b>
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**Final Ruling:** No appearance at the January 5, 2022 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 November 10, 2021. The court computes that 56 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: the amount of \$78.00, due on 11/2/21.

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

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

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

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

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

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

45. [18-20764-E-13](#)      **HAZEL CARSON**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mary Ellen Terranella**      **11-9-21 [73]**

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.

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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed Ex Parte Motion to Dismiss the pending Motion on December 20, 2021 Dckt. 87; 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 Hazel Marie Carson (“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 an order substantially in the following form holding that:

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, 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. 87, 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 January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Randell Dee Comstock and Maria Elvira Comstock (“Debtor”), is delinquent on plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,206.20 delinquent in plan payments, which represents multiple months of the \$2,603.10 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

47.	<a href="#"><u>21-22968</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	<b>BOUALY XIONG</b> Candace Brooks	<b>MOTION TO DISMISS CASE</b> 12-8-21 <a href="#"><u>[29]</u></a>
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**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. 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, Boualy Xiong (“Debtor”), is delinquent and overextended in plan payments.

## DISCUSSION

## **Delinquent**

Debtor is \$3,180.00 delinquent in plan payments, which represents multiple months of the \$1,550.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee's calculations, Debtor's Plan will complete in 65 months, instead of 60 months pursuant to the confirmed plan. This is due to Debtor estimating unsecured claims at \$85,884.00, when they are filed at \$89,496.45. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Leeanna May Atterberry (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$9,981.00 delinquent in plan payments, which represents multiple months of the \$1,245.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

49.    [18-24070-E-13](#)        **LAWANNA PARKER**                                **MOTION TO DISMISS CASE**  
         [DPC-4](#)                    **Mikalah Liviakis**                                **12-8-21 [48]**

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on December 29, 2021, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Lawanna Gean Parker (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by 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. 55, 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 January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Larry Francis Stewart and Sena Ann Stewart (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$8,400.00 delinquent in plan payments, which represents multiple months of the \$3,650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

51.     [19-24473-E-13](#)     **JANICE PERIOLAT**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)             **Julius Cherry**         **12-8-21 [34]**

**Final Ruling: No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1.       the debtor, Janice Dawn Periolat (“Debtor”), is delinquent in plan payments and the plan is overextended.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 43. Debtor requests the court approves a modification to raise her payment to \$2,625.00 so all claims are paid in full. Exhibit B includes Debtor’s proposed modification and order. Additionally, Debtor filed Amended Schedules I and J to reflect their current income and expenses. Dckt. 38, 39.

## **TRUSTEE’S RESPONSE**

Trustee filed a response on December 29, 2021. Dckt. 46. Trustee states Debtor is now current under the confirmed Plan and does not oppose the proposed modification

As the modification will allow Debtor to pay the plan in full within sixty (60) months and Debtor is now current, the motion to dismiss is denied and the bankruptcy case shall proceed in this court.

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

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

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

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



**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Ramon Parra (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,589.00 delinquent in plan payments, which represents multiple months of the \$863.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

53. 20-21776-E-13 JANICE AVERY MOTION TO DISMISS CASE  
DPC-2 Lars Fuller 12-8-21 [25]

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on December 22, 2021, Dckt. 31; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Janice Johnson Avery (“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. 29, 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 January 5, 2022 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 December 8, 2021. 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 the Chapter 13 Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

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

1. the debtor, Brian Keith Mays (“Debtor”), has failed to provide the Trustee copies of tax returns and debtor is paying too much into the plan without making a modification. This is making it difficult for Trustee to comply with the Plan as they cannot take a percentage on test funds or disburse them to creditors since they are not being paid pursuant to the confirmed plan.

#### **COUNSEL’S RESPONSE**

Debtor’s Counsel, Scott Shumaker, filed a response on December 22, 2021. Dckt. 79. Counsel states they have attempted to contact Debtor, but have been unsuccessful.

#### **TRUSTEE’S STATUS REPORT**

Trustee filed a status report on December 29, 2021. Dckt. 84. Trustee states proper documents were uploaded to the 13 Documents secure website after the last status report was e-filed and they have been reviewed. The motion to dismiss has been resolved. Trustee requests that the motion be denied.

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

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

55. [20-22378-E-13](#) **FRANK MILLER** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Seth Hanson** **12-8-21 [17]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. 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.

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

1. the debtor, Frank Wesley Miller (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,372.73 delinquent in plan payments, which represents multiple months of the \$2,166.80 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Judith Ann Gee ("Debtor"), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$5,277.52 delinquent in plan payments, which represents multiple months of the \$2,729.85 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

57. [21-22085-E-13](#)      **SHARRON WINGHAM**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Bert Vega**                      **12-6-21 [41]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 6, 2021. 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 hearing on the Motion to Dismiss is continued to be heard in conjunction with the Motion to Modify on January 25, 2022 at 2:00 p.m. in Department E.**

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

1. the debtor, Sharron Renee Wingham (“Debtor”), is delinquent and no plan is pending.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 21, 2021. Dckt. 54. Debtor states they will cure their delinquency on or before December 30, 2021 and they filed their Second Amended Plan on December 17, 2021. The Motion to Confirm is set for hearing on January 25, 2022. Dckt. 46.

The court notes these filings are reflected on the docket. As such, this cures Trustee’s concern for no plan pending.

#### **TRUSTEE’S STATUS REPORT**

Trustee filed a status report on December 29, 2021. Dckt. 58. Trustee states a motion to modify is set for January 25, 2022 but no payment has been received in December to date although an electronic payment is pending. Trustee requests that the matter be continued.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to be heard in conjunction with the Motion to Modify on **January 25, 2022 at 2:00 p.m.** in Department E.

58. [18-21488-E-13](#) [DPC-3](#) **DANIEL/ALLISON BRENNAN** **MOTION TO DISMISS CASE**  
**Charles Hastings** **12-8-21 [259]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. 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.

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

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



that:

1. the debtor, Daniel Lawrence Brennan and Allison Lyn Brennan (“Debtor”), is delinquent in plan payments and the plan is overextended.

## **DISCUSSION**

### **Delinquent**

Debtor is \$178,627.06 delinquent in plan payments, which represents multiple months of the \$6,000.00 plan payment. Trustee notes the confirmed Plan provided for an additional lump sum payment in month 18 in the amount of \$359,00.00 from the sale of their home, but the amount the Trustee received was actually \$252,672.94. 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).

### **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee’s calculations, Debtor’s Plan will complete in 108 months, instead of 60 months pursuant to the confirmed plan. This is due to \$97,541.50 available to pay creditors when \$395,017.88 is needed. Debtor estimating priority claims at \$283,828.00, when they actually totaled \$283,828.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

**Final Ruling: No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The hearing on the Motion to Dismiss is continued to February 15, 2022 at 2:00 p.m** to be conducted in conjunction with the hearing on the Objection to Claim of Rosemarie A. Farmer, Claim No. 4-1.

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

1. the debtor, David Eastman Sweeney and Stacy Dawn Ader-Sweeney (“Debtor”), is delinquent in plan payments and the plan is overextended.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 22, 2021. Dckt. 108. Debtor states the delinquency will be cured prior to the hearing date and they filed an objection to the subject priority claim on December 17, 2021. The hearing on the Objection has been set for February 1, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$390.00 delinquent in plan payments, which represents multiple months of the \$130.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the

permitted sixty months. According to Trustee's calculations, Debtor's Plan will complete in 490 months, instead of 60 months pursuant to the confirmed plan. This is due to Debtor not estimating a priority proof of claim filed by Rose Farmer (POC 4-1) in the amount of \$53,101.70. The claim was included in Trustee's Notice of Filed Claims. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Debtor has now filed an Objection to Proof of Claim 4-1, for which the hearing is set for February 1, 2022. In light of the modest amount of delinquency and the priority claim being the more significant issue, the hearing on this Motion to Dismiss is continued to be conducted with the Objection to Claim.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to **February 1, 2022 at 2:00 PM.**, to be conducted in conjunction with the hearing on the Objection to Claim of Rosemarie A. Farmer, Claim No. 4-1.

**Final Ruling:** No appearance at the January 5, 2022 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 December 1, 2021. 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.

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

1. the debtor, Maria de Jesus Salaices (“Debtor”), has no plan pending, 521 documents have still not been provided, and Chapter 13 documents are still inaccurate.

## DISCUSSION

### Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on October 18, 2021. 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).

### 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). However, Schedule I reflects employment for 2.5 years with current wage income of \$3,000.00 per month. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **Failure to File Documents Related to Petition**

Trustee filed a Motion to Dismiss based on Debtor's failure to amend the Statement of Financial Affairs Questions #4 and #5. Statement of Financial Affairs, Questions #4 and #5, has not been amended and indicates income for just calendar years 2019 and 2020 and does not show any income for calendar year 2021. Without Debtor amending these, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Mary Kathryn Gower (“Debtor”), is delinquent in plan payments and their plan is overextended.

## **DISCUSSION**

### **Delinquent**

Debtor is \$985.01 delinquent in plan payments, which represents multiple months of the \$395.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Overextended**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to Trustee’s calculations, Debtor’s Plan will complete in 69 months, instead of 60 months pursuant to the confirmed plan. This is due to priority claims totaling \$15,166.40

where Debtor estimated them to be \$11,300.00. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

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

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

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

62. [18-22696-E-13](#) **JOHN ROBERT SWENSSON** **MOTION TO DISMISS CASE**  
[DPC-2](#) **David Foyil** **12-8-21 [88]**

**Final Ruling: No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The hearing on the Motion to Dismiss is continued to February 15, 2022 at 2:00 p.m** to be conducted in conjunction with the hearing on the Motion to Confirm Modified Plan

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

1. the debtor, JOHN ROBERT XOVOX SWENSSON (“Debtor”), is

delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 16, 2021. Dckt. 101. Debtor states filed concurrently is Debtor's Motion to Confirm the First Modified Chapter 13 Plan. Additionally, Debtor states they are current on Chapter 13 plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,620.32 delinquent in plan payments, which represents multiple months of the \$3,515.41 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).

### **Plan and Motion to Confirm Filed**

Debtor has filed a Modified Plan (Dckt. 94) and Motion to Confirm (Dckt. 92) 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. 95) states some personal knowledge testimony in support of the Motion to Confirm.

Unfortunately, the Declaration states that some information therein is "stated under penalty of perjury" because Debtor is only informed (possible a repeated hearsay statement) and believes (possibly "believing it" because such belief is necessary if Debtor is going to win the day. Merely repeating what someone else says and basing relief on what a person believes (as opposed to personally knows).

With the court continuing the hearing, Debtor can correct this evidentiary shortcoming and file an amended declaration which provides only actual personal knowledge testimony. The amended declaration shall be filed on or before January 19, 2022.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to **February 15, 2022, at 2:00 p.m** to be conducted in conjunction with the hearing on the Motion to Confirm Modified Plan



**Final Ruling:** No appearance at the January 5, 2022 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 December 8, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Mohammad Mahmoud and Nejmah Mahmoud (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$5,700.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

64. [20-20298-E-13](#)      **SELENIA BRITTANY CHARLES**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Richard Kwun**                      **12-8-21 [77]**

**Final Ruling:** No appearance at the January 5, 2022 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 December 29, 2021, Dckt. 84; 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 Selenia Brittany Michelle Charles (“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. 84, 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.

65.     [17-21081](#)-E-13     **DOREEN TORRES**     **MOTION TO DISMISS CASE**  
         [DPC](#)-4             **Robert Gimblin**             **12-8-21 [67]**

**Final Ruling:** No appearance at the January 5, 2022 hearing is required.

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

66.     [21-23640](#)-E-13     **FLYNN JEMERSON**     **ORDER TO SHOW CAUSE - FAILURE**  
                     **Matthew DeCaminada**             **TO PAY FEES**  
                                 **11-24-21 [15]**

**Final Ruling:** No appearance at the January 5, 2022 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 November 26, 2021. 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: the amount of \$1.00, due on 11/19/21, has not been paid.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
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The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

The court shall issue 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.