

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

**The court has reorganized the cases, placing all of the Final Rulings
in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 35.**

February 20, 2019 at 10:00 a.m.

1.	<u>18-26203-E-13</u>	CATHERINE PORTER Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 1-4-19 [36]
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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 January 6, 2019. The court computes that 45 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on January 2, 2019.

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 subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

2. 18-26203-E-13 **CATHERINE PORTER** **ORDER TO SHOW CAUSE - FAILURE**
 Peter Macaluso **TO PAY FEES**
 2-4-19 [42]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 February 6, 2019. The court computes that 14 days' notice has been provided.

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

<p>The Order to Show Cause is sustained, and the case is dismissed.</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: \$77.00.

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

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

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

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

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

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

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

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Christopher Andrew Morris ("Debtor") is \$1,503.16 delinquent in plan payments. Additionally, Trustee's Motion argues that Debtor did serve or set for confirmation hearing the Amended Plan filed on August 30, 2018.

DEBTOR'S REPLY

Debtor filed a Reply to Trustee's Motion on February 5, 2019. Dckt. 33. Debtor states he is ready to cure the delinquency but that there is an (unspecified) issue with the significant increase, which adds approximately \$30,000.00 to the life of the plan.

Debtor further states the Amended Plan was served February 5, 2019, and a Motion setting confirmation hearing will be filed before February 7, 2019.

RULING

Debtor filed and served a Second Amended Plan on February 5, 2019. Dckts. 31, 32. However, a review of the Second Amended Plan demonstrates it is merely the First Amended Plan refiled, except for increasing the monthly plan payment by \$200. *compare* Amended Plan, Dckt. 19, *with* Amended Plan Dckt. 32.

Interestingly, Debtor has had two recent Chapter 13 Cases he commenced and have been

dismissed:

Chapter 13 Case 18-24325, Counsel Gary Fraley
Filed.....July 10, 2018
Dismissed.....August 8, 2018

Chapter 13 Case 15-27013, In *Pro Se*
Filed.....September 4, 2015
Dismissed.....September 22, 2015

A review of the docket shows that Debtor has not yet filed a motion to confirm the plan (the same plan which has been pending since August 2018). 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).

Furthermore, Debtor is \$1,503.16 delinquent in plan payments, which represents roughly half of one month of the \$3,238.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 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 -----.

The Motion to Dismiss is XXXXXXXXXX.
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David Cusick (the “Chapter 13 Trustee”) asserts Andrey and Mariya Slobodyanyuk (“Debtor”) have caused unreasonable delay that is prejudicial to creditors by failing to file an amended plan and setting it for confirmation.

DEBTOR’S RESPONSE

On November 8, 2018, Debtor filed a Response opposing the Chapter 13 Trustee’s Motion to Dismiss. Debtor states there is an ongoing appraisal of the property that is subject of a motion to avoid judicial lien. Debtor argues their conduct is not prejudicial delay to creditors.

NOVEMBER 14, 2018 HEARING

At the November 14, 2018 hearing Debtor reported there is an ongoing appraisal of the property that is subject of a motion to avoid judicial lien. The parties in agreement, the court continued the hearing

to February 20, 2019, to allow the appraisal to be completed and an amended plan filed. Dckt. 38.

RULING

A review of the docket shows that no documents have been filed since the November 14, 2018 hearing. At the hearing, the Debtor reported **XXXXXX**.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss **XXXXXXXXX**.

5. [18-27506-E-13](#) **CHRISTA HYLEN** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Peter Cianchetta** **1-23-19 [16]**

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 January 23, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Christa Lynne Hylen (“Debtor”) is \$729.59 delinquent in plan payments. Additionally, Trustee asserts Debtor has not filed her 2017 tax return.

DEBTOR'S REPLY

Debtor filed a Reply to the Motion on January 28, 2019. Dckt. 20. Debtor states she will file a modified plan prior to the hearing date. Further, Debtor states that all income tax returns have been filed, the 2017 return having been mailed after the 341 meeting.

Debtor failed (or refused) to provide a declaration attesting under penalty of perjury that the modified plan will be filed or that the 2017 return was filed.

RULING

Debtor is \$729.59 delinquent in plan payments, which represents one month of the \$729.59 plan payment. Before the hearing, another plan payment will be due. The case was filed on November 30, 2018 and the Plan in §2.01 calls for payments to be received by the Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor admitted at the Meeting of Creditors that not all pre-petition tax returns required for the four years preceding the filing of the petition have not been filed, with the 2017 return outstanding. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

Debtor states in its Reply opposing the Motion that a modified plan will be filed, and the 2017 returns have been filed. No evidence has been provided to support these factual allegations. Evidence is required. LOCAL BANKR. R. 9014-1(d)(3)(D); *See also* LOCAL BANKR. R. 9014-1(f)(1)(B). Counsel for Debtor is reminded not complying with the Local Bankruptcy Rules is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 10, 2019. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on January 3, 2019.

<p>The Order to Show Cause is sustained, and the case is dismissed.</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: \$77.00.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 2, 2019. By the court's calculation, 49 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.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Jennel Harris ("Debtor") is \$5,786.00 delinquent in plan payments.

Additionally, the Chapter 13 Trustee argues that Harley-Davidson Credit Corp's Objection to Confirmation DJD-1 was sustained by the court at the December 18, 2018 hearing, Dckt. 44, and Debtor has failed to file an amended plan and set for confirmation hearing.

DEBTOR'S RESPONSE

Debtor filed a Response on February 6, 2019. Dckt. 53. The Response states Debtor is working on resolving the issues in the case.

RULING

Debtor is \$5,786.00 delinquent in plan payments, which represents multiple months of the \$2,893.00 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).

Further, the court sustained the Objection To Confirmation by Harley-Davidson Credit Corp's on December 18, 2018 hearing. Dckt. 44. Debtor has failed to file an amended plan and set for confirmation hearing. 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).

Additionally, an Order To Show Cause was issued by the court on February 7, 2019, for failure to pay fees. Dckt. 55.

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

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

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

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

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

8. [18-23016-E-13](#) **TOMMY/SHERRI CORDRAY** **MOTION TO DISMISS CASE**
[DPC-1](#) **Steven Alpert** **1-9-19 [26]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 9, 2019. By the court’s calculation, 42 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Tommy Lee Cordray and Sherri Annette Cordray (“Debtor”) are \$1,122.00 delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 6, 2019. Dckt. 30. Debtor states a modified plan will be filed to address the delinquency.

RULING

Debtor is \$1,122.00 delinquent in plan payments, which represents multiple months of the \$561.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1)

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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—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 10, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, John Tavera ("Debtor"), is \$4,058.52 delinquent in plan payments.

JANUARY 9, 2019 HEARING

At the January 9, 2019 hearing the court continued the hearing on the Motion to February 20, 2019. Dckt. 38.

DISCUSSION

Debtor is \$4,058.52 delinquent in plan payments, which represents multiple months of the \$2,011.03 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed an initial response or opposition, and has not filed any supplemental opposition since the January 9, 2019 hearing.

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

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

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

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

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

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

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Christopher Gibson Moreland and Cheryl Jean Day-Moreland ("Debtor") are \$1,560.00 delinquent in plan payments.

DEBTOR'S REPLY

Debtor filed a Reply on February 4, 2019. Dckt. 24. Debtor states the payment was missed due to confusion as to the due date. Debtor argues a payment of \$780.00 was made on February 1, 2019 and Debtor will become current before the hearing.

RULING

Debtor is delinquent in plan payments. Before the hearing, another plan payment will be due. While Debtor states \$780.00 was paid on February 1, 2019, Debtor will need to pay \$1,560.00 to become current before the hearing date. 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 the remainder before the hearing is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

11. [14-26385-E-13](#) **PATRICIA SIMS** **MOTION TO DISMISS CASE**
[DPC-4](#) **Helga White** **1-4-19 [83]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 4, 2019. By the court’s calculation, 47 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.
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Patricia Gayle Sims (“Debtor”) is \$6,794.54 delinquent in plan payments.

DEBTOR’S OPPOSITION & DECLARATIONS

Debtor filed an Opposition on February 6, 2019. Dckt. 87. Debtor states \$2,300.00 was paid on January 11, 2019, and the remainder of the delinquency will be paid prior to the hearing.

On February 7, 2019, Debtor filed a Supplemental Declaration. Dckt. 91. The Declaration states Debtor is now current, having provided a check for \$495.00 to the Trustee.

On February 13, 2019, Debtor’s Counsel submitted her own Declaration in support of the Opposition. Dckt. 93. Debtor’s counsel states under penalty of perjury that Debtor has paid and overpaid the plan payments, and is current.

Debtor's counsel states Debtor had paid \$115,363.04 into the Plan as of the date Trustee filed this Motion, that Debtor paid another \$6,795.00 since then, and therefore that \$122,158.04 has been paid to date (which is \$44,119.01 more than the \$78,039.03 proof of claim, No. 6, amount filed by the only creditor, Bank of America).

RULING

At the hearing, **XXXXXXXXXXXX**.

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

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

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

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

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

12.	<u>14-27630</u> -E-13 <u>DPC</u> -3	ROSIE GOMEZ Gary Fraley	MOTION TO DISMISS CASE 1-14-19 [94]
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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2019. By the court's calculation, 37 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

Rosie Lares Gomez (“Debtor”) is \$3,597.90 delinquent in plan payments.

DEBTOR’S REPLY

Debtor’s counsel filed a Reply on February 7, 2019. Dckt. 98. Debtor’s counsel argues that a payment was made January 25, 2019 in the amount of \$3,000.00 and another payment of \$2,165.00 on February 25, 2019. No evidence of such purported payment is provided, the Debtor either unable or unwilling to make such statements under penalty of perjury.

DISCUSSION

Debtor is \$3,597.90 delinquent in plan payments, which represents multiple months of the \$1,566.56 plan payment. Before the hearing, another plan payment will be due. As a result, Debtor will need to pay \$5,164.46 in order to be current by the date of the hearing. 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. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 8, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Taujai Donae Carey ("Debtor") is \$504.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 6, 2019. Dckt. 101. Debtor states she recently birthed a child and is trying to get back on track with payments.

A review of the Docket shows that Debtor's counsel filed an Exhibit and Declaration with the docket control number "DPC-3." Dckts. 100, 102. The present Motion has the DCN "DPC-4."

Debtor states under penalty of perjury that \$500.00 will be made immediately, and that the delinquency will be cured before the hearing. Dckt. 100.

Exhibit (unnamed) states "TFS payment made today." Dckt. 102. The document appears to be a screenshot of a payment to Trustee in the amount of \$500.00. The document is unauthenticated, and no exception to the hearsay rule is advanced.

RULING

Debtor has paid \$500.00 to the Trustee (Dckt. 100), but acknowledges an additional \$256.00 will be required to be made before the hearing to become current. Failure to make plan payments 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 pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

14. [18-21644](#)-E-13 ANGELO/LISA OLIVA MOTION TO DISMISS CASE
[DPC-3](#) Anh Nguyen 1-11-19 [75]

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 January 11, 2019. By the court’s calculation, 40 days’ notice was provided. 28 days’ notice is required.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Angelo Arnolfo Stefano Oliva and Lisa Renee Oliva (“Debtor”) are \$9,551.00 delinquent in plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2019. Dckt. 79. The Response states Debtor forgot to increase the plan payment as provided for in the Confirmed Plan. Debtor states further the delinquency has been cured.

DISCUSSION

Debtor states in its Response opposing the Motion that certain payments have been made. No evidence has been provided to support these factual allegations. Evidence is required. LOCAL BANKR. R. 9014-1(d)(3)(D); *See also* LOCAL BANKR. R. 9014-1(f)(1)(B). Not complying with the Local Bankruptcy Rules is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

At the hearing, **XXXXXXXXXX**.

Ruling

Debtor is \$9,551.00 delinquent in plan payments, which represents multiple months of the \$6,640.00 plan payment. Before the hearing, another plan payment will be due. Thus, Debtor will need to pay \$16,191.00 to be current with the plan before the date of this hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 23, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Aracely Rivas ("Debtor") is \$326.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on February 6, 2019. Dckt. 46. Debtor's counsel states he has not been able to reach Debtor.

RULING

Debtor is \$326.00 delinquent in plan payments, which represents one month of the \$326.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 15, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Kenneth Tabor ("Debtor") is \$3,980.00 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 6, 2019. Dckt. 145. Debtor states Debtor will either become current or file a modified plan before the date of the hearing.

RULING

Debtor is \$3,980.00 delinquent in plan payments, which represents multiple months of the \$1,990.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, neither a promise to pay, nor a promise to file a modified plan is evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

17. [18-25149-E-13](#) **JOHN STAHLECKER** **MOTION TO DISMISS CASE**
[DPC-1](#) **Paul Bains** **1-14-19 [49]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2019. By the court's calculation, 37 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that John Andrew Stahlecker ("Debtor") is \$4,836.00 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 6, 2019. Dckt. 53. Debtor promises to cure the delinquency before the hearing date.

RULING

Debtor is \$4,836.00 delinquent in plan payments, which represents multiple months of the \$2,912.00 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. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

18. [18-25397-E-13](#) **MYEVA/FREDERICK THIERRY** **MOTION TO DISMISS CASE**
[DPC-2](#) **Paul Bains** **1-3-19 [29]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 3, 2019. By the court’s calculation, 48 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Myeva V. Thierry and Frederick Thierry Jr. (“Debtor”) are \$3,495.00 delinquent in plan payments. Additionally, Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 20, 2019.

DEBTOR’S RESPONSE

Debtor filed a Response on February 6, 2019. Dckt. 33. Debtor states an amended plan will be filed prior to the hearing to bring Debtor current.

RULING

Debtor is \$3,495.00 delinquent in plan payments, which represents multiple months of the \$1,165.00 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).

Furthermore, Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 20, 2019. Order, Dckt. 27. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file an amended plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

19. [17-26256-E-13](#) **COCO COCOZZELLA** **MOTION TO DISMISS CASE**
[DPC-1](#) **Eric Schwab** **1-8-19 [19]**

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 January 8, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that Coco Angela Cocozzella ("Debtor") is \$3,204.00 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 1, 2019. Dckt. 23. Debtor promises to file a modified plan before the hearing date.

RULING

Debtor is \$3,204.00 delinquent in plan payments, which represents multiple months of the \$1,602.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the docket demonstrates no modified plan has been filed. Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 23, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00 a.m.

David Cusick ("the Chapter 13 Trustee") argues that Latoya Smith ("Debtor") did not commence making and is \$2,500.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition (as well as a duplicate) on February 6, 2019. Dckts. 31, 32. Debtor states her wages have been garnished by the Franchise Tax Board, and that Debtor is trying to become current. Debtor requests an opportunity to file an amended plan.

RULING

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

In light of Debtor's request and Debtor appearing to be actively prosecuting the case, the court shall continue the hearing on the Motion to March 20, 2019 at 10:00 a.m.

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

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

The Motion to Dismiss the Chapter 13 case filed by David Cusick ("the

Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00 a.m.

21. [13-29064](#)-E-13 **TERRY/REBECA BRISTER** **CONTINUED MOTION TO DISMISS**
[DPC-3](#) **Mary Ellen Terranella** **CASE**
10-17-18 [[125](#)]

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

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

Below is the court's tentative ruling.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 17, 2018. 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.

David Cusick (the “Chapter 13 Trustee”) seeks dismissal of the case on the basis that Terry and Rebeca Brister (“Debtor”) are \$4,977.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 31, 2018. Dckt. 129. Debtor asserts a \$1,500.00 payment was made after the filing of this Motion. Debtor asserts further Debtor plans to make a payment of \$1,000.00 in November, and then to make payments of \$1,500.00 on the third Wednesday of each month, commencing in December 2018 and continuing until the remaining balance (asserted to be \$4,367.00) is paid in full.

The Opposition explains further Debtor has had significant health issues during the Chapter 13 Plan term, causing both Co-Debtors to retire, reducing income and making plan payments more difficult. Nevertheless, Debtor asserts the plan is close to completion.

NOVEMBER 14, 2018 HEARING

At the November 14, 2018, hearing, Debtor's counsel and the Trustee agreed to continue the hearing to allow Debtor to conclude the necessary payments under the confirmed plan. Dckt. 132.

DISCUSSION

No supplemental response or opposition has been filed since the prior hearing.

From the evidence presented, Debtor is delinquent at least \$4,367.00, which represents multiple months of the \$890.00 plan payment. Debtor has explained both Co-Debtors have retired and income has been reduced (this being reflected in past motions to confirm amended and modified plans), but has not explained how Debtor will come up with the remaining funds to become cure the delinquency here. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 20, 2019. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on January 14, 2019.

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: \$77.

The court shall issue a minute order 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.

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).

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2019. 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 -----.

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Amanda C. Shriner ("Debtor") is \$1,020.00 delinquent in plan payments, which represents multiple months of the \$510.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 9, 2019. By the court's calculation, 42 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.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Blaire Nicole Knight ("Debtor") is \$884.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 5, 2019. Dckt. 103. Debtor states the delinquency will be cured before the hearing date.

RULING

Debtor \$884.00 delinquent in plan payments, which represents multiple months of the \$221.00 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. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

25. [18-20779-E-13](#) **DAMON TURNER** **MOTION TO DISMISS CASE**
[DPC-3](#) **Scott Hughes** **1-15-19 [64]**

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

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

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

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Damon Turner ("Debtor") is \$5,185.55 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Declaration in Response to the Motion on February 6, 2019. Dckt. 68. Debtor's counsel states in the Response that he has not been able to contact Debtor regarding the Motion.

RULING

Debtor is \$5,185.55 delinquent in plan payments, which represents slightly more than one month of the \$3,640.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

26. [18-27680-E-13](#) **CHERYL BLACK**
 Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-16-19 [28]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. 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 January 18, 2019. The court computes that 33 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on January 11, 2019.

<p>The Order to Show Cause is sustained, and the case is dismissed.</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: \$79.

The court shall issue a minute order 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.

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).

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 January 30, 2019. By the court's calculation, 21 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 -----.

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

David Cusick ("the Chapter 13 Trustee") argues that cause exists to dismiss the case of Cheryl Black ("Debtor") on the following grounds:

1. Debtor failed to appear at the January 24, 2019 Meeting of Creditors. The Meeting was continued to March 19, 2019.
2. Debtor is \$1,200.00 delinquent in plan payments, having paid \$0.00 to date.
3. Debtor has not provided Trustee the most recent prepetition year's tax return or transcript thereof.
4. Debtor has not provided Trustee 60 days of employer pay advices.

DISCUSSION

Debtor did not commence making plan payments and is \$1,200.00 delinquent in plan payments, which represents one month of the \$1,200.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

Debtor has not provided the Chapter 13 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).

RULING

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 8, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Name of Debtor ("Debtor") is \$460.00 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 5, 2019. Dckt. 65. Debtor's counsel states Debtor brought counsel a money order for \$460.00 to cure the two months' arrears and will bring another \$230.00 when Debtor is paid. Counsel states she mailed the money order.

DISCUSSION

Failure to Provide Evidence

Debtor states in its Response opposing the Motion that certain payments have and will be made (including counsel's personal representation that a money order was mailed). No evidence has been provided to support these factual allegations. Evidence is required. LOCAL BANKR. R. 9014-1(d)(3)(D); *See also* LOCAL BANKR. R. 9014-1(f)(1)(B). Not complying with the Local Bankruptcy Rules is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

At the hearing, **XXXXXXXXXXXX**.

Ruling

Debtor is \$460.00 delinquent in plan payments, which represents multiple months of the \$230.00

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

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

29. [18-25583-E-13](#) [DPC-1](#) **NATHAN SARNOSKI AND
TABATHA CAMPBELL
Nikki Farris** **MOTION TO DISMISS CASE
1-16-19 [20]**

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 January 16, 2019. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Nathan Alan Sarnoski and Tabatha G. Campbell (“Debtor”) are \$1,896.09 delinquent in plan payments.

DEBTOR’S REPLY

Debtor filed a Reply on February 6, 2019. Dckt. 24. Debtor states every effort will be made to

cure the delinquency before the hearing date.

RULING

Debtor is \$1,896.09 delinquent in plan payments, which slightly more than one month of the \$1,542.03 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).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 13, 2018. 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 is ~~XXXXXXXXXX~~.

David Cusick (the "Chapter 13 Trustee") argues that Barbara Graves ("Debtor") is in material default under the Plan because Debtor has failed to turn over tax refunds from 2014 to 2016 totaling \$8,015.00. Section five of the Order Confirming the Plan makes that failure a breach of the Plan. Failure to provide those funds puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on June 27, 2018. Dckt. 51. Debtor states that she completed her missing tax returns within one month of filing this case and has not received any tax returns to turn over to the Chapter 13 Trustee.

JULY 11, 2018, HEARING

At the July 11, 2018, Debtor and Debtor's counsel both promised to diligently prosecute the recovery of the tax refunds and get the monies paid into the Plan. Dckt. 54. The court continued the hearing on the Motion to Dismiss to September 5, 2018.

SEPTEMBER 5, 2018 HEARING

At the September 5, 2018 hearing on the Motion, Debtor's counsel professed to be working to address issues raised by this court, but the reported activities appeared to consist of counsel merely sending emails to Debtor and the tax professional. Debtor's counsel's efforts did not include follow-ups, letters to the tax professional or their supervisor at H&R Block, and or phone calls being made to the tax professionals to assist Debtor. For her part, Debtor appeared in court with some tax documents, but had not delivered the documents to the Chapter 13 Trustee prior to the hearing.

Debtor identified the tax professional currently providing her services as Christine Baily of H&R Block: 11960 W Hwy 88 #301b, Jackson, CA 95642. Debtor also stated the difficulty in Debtor fulfilling her obligations in this case has resulted, at least in part, from the tax professionals at H&R Block working only one day a week—Thursdays. The Debtor and the professionals representing her are creating the significant risk of damages being incurred by the bankruptcy estate.

Determining it was necessary to have Debtor's tax professional appear in court to address their purported inability to assist Debtor due to the professionals one-day work week, the court continued the hearing to November 14, 2018, and ordered Christine Baily, the tax professional identified by Debtor to appear at the continued hearing. The court further ordered Debtor Barbara Graves and her attorneys, Gary Fraley, Esq., and Diane Egger, Esq., and each of them shall appear at the November 14, 2018, hearing in person, with no telephonic appearances permitted.

OCTOBER 2018 STATUS REPORT

Trustee filed a Status Report on the Motion to Dismiss on October 30, 2018. Dckt. 60. Trustee states that a cashier's check from the Debtor in the amount of \$3,847.31 was received October 22, 2018. A note accompanying the check stated "\$2,500 tax return, \$1,347.31 Mo Mortgage Pymt."

Trustee argues Debtor has only provided an additional \$2,500 from tax returns to date, and not the \$8,015.00 in the Order Confirming Plan (Dckt. 44 at 2:5-9) and listed on Debtor's Schedule A/B. Dckt. 1 at 15-16.

NOVEMBER 14, 2018 HEARING

At the November 14, 2018 hearing the Trustee reported that Debtor has made a payment of \$3,874.00, of which \$2,500 was to represent the tax refund. Civil Minutes, Dckt. 63. Counsel for the Debtor reported that the tax returns have been turned over to the Trustee. There was \$8,015.00. Debtor diverted the 2015 refund, which was around \$3,000. The IRS has not issued the 2014 refund in the amount of \$1,000.00.

The court continued the hearing to February 20, 2019. Order, Dckt. 64.

FEBRUARY 2019 STATUS REPORT

Trustee filed a Status Report on February 6, 2019. Dckt. 65. Trustee reports that a check was received in the amount of \$7,200.00 on February 5, 2019. Trustee asserts that, presuming \$1,951.63 is being put towards curing the Debtor's delinquency in payments, that the remaining tax refunds funds owing to be paid are \$266.63.

DISCUSSION

Debtor has now provided nearly all of the outstanding tax refund to Trustee, with \$266.63 remaining to be paid.

At the hearing **XXXXXXXXXXXXXXXXXXXXXXX**.

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

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

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

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

31. [15-24997-E-13](#) **DAVID/AMY POST** **MOTION TO DISMISS CASE**
 [DPC-4](#) **Mary Ellen Terranella** **1-10-19 [131]**

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 January 10, 2019. By the court’s calculation, 41 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that David Lawrence Post and Amy Michele Post (“Debtor”) are \$810.00 delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 4, 2019. Dckt. 135. Debtor states Debtor made a payment of \$440.00 on January 25, 2019 and will make a payment of \$810.00 on February 8, 2019 to cure delinquency.

DISCUSSION

Failure to Provide Evidence

Debtor states in its Opposition to the Motion that certain payments have and will be made. No evidence has been provided to support these factual allegations. Evidence is required. LOCAL BANKR. R. 9014-1(d)(3)(D); *See also* LOCAL BANKR. R. 9014-1(f)(1)(B). Not complying with the Local Bankruptcy Rules is cause for an appropriate sanction. LOCAL BANKR. R. 1001-1(g).

At the hearing, **XXXXXXXXXX**.

Ruling

Debtor is \$810.00 delinquent in plan payments, which represents multiple months of the \$440.00 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. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is 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 January 23, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss granted, and the case is dismissed

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case because debtor Craig Steven Mason ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 20, 2018.

DEBTOR'S REPLY

Debtor filed a Reply to the Motion on February 6, 2019. Dckt. 143. Debtor states the January 25, 2019 payment has been made. Debtor states further that a new plan had not yet been filed because the Trustee requested monthly profit and loss statements to support a proposed \$200.00 increase in the plan payment, and Debtor has been gathering those documents.

Debtor notes that a Fifth Amended Plan has been filed along with Debtor's Reply.

DISCUSSION

Debtor filed an Amended Plan and Motion to Confirm on February 6, 2019. Dckt. 148. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 148. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Denial Of Prior Amended Plan

At the October 16, 2018 hearing on Debtor's prior Motion To Confirm, Trustee argued Debtor's plan did not appear feasible based on Debtor's Schedules. Dckt. 129. That Fourth Amended Plan called for payments in Month 14 to increase from \$5,750.00 to \$5,950.00. Amended Plan, Dckt. 129. Debtor's

projected disposable income listed on his Schedule J, and confirmed in his declaration in support of this Motion, was \$5,773.00. Dckts. 27, 116. The court continued the hearing to November 9, 2018, and then November 20, 2018.

On November 9, 2018, Debtor filed an Amended Schedule I increasing income by \$200.00 (the amount necessary for a feasible plan) by increasing the “fiancé contribution” from \$3,000 to \$3,200. Amended Schedule I, Dckt. 130. In reviewing and denying the plan, the court made the following comments:

Debtor lists on his Schedules A/B property commonly known as 23526 Rosewood Drive, California. Schedule A/B, Dckt. 27 at p.1. That property is valued at \$579,000. The debt securing that property is \$723,269.15. See Proof of Claim, No. 1. The Deed of Trust indicates **Debtor is the sole owner of the property.** Id.

Debtor has a fiancé whom is contributing \$3,200 to the proposed plan. **If Debtor and his fiancé are living as a family unit, residing at Debtor’s property and sharing expenses, the court is concerned that the bankruptcy case is being abused in a way where Debtor and his fiancé are merely choosing what income and expenses they want to assign to the case** (this seems likely where the fiancé is contributing such a significant amount to the plan). **Debtor may assume it is clear that his fiancé’s AirBnb income is from renting out her own property, but the court is not making the same presumption.**

In reviewing Schedule J filed by Debtor, Dckt. 27 at 21-22, **Debtor lists his fiancé, two teenage children, and his fiancé’s teenage child as dependants. Though living in the same household, Debtor does not provide information as to the fiancé’s income.** It does appear that Debtor is including all of the expenses for the “dependants,” but is excluding the fiancé’s income from the household expenses—except such income as is provided to allow Debtor to proceed with a nominal (5%) dividend distribution to creditors holding general unsecured claims. Fourth Amended Plan ¶ 3.14, Dckt. 118.

Additionally, if Debtor’s fiancé is in fact living separately (and not part of the household as a dependant), then the court has concerns about whether the proposed Amended Plan is really feasible, given its significant reliance on voluntary gifts/contributions from an individual not in the bankruptcy case. Without an accurate picture of Debtor’s financial reality, the court cannot determine whether the Plan is confirmable. 11 U.S.C. § 1325(a)(6).

Civil Minutes, Dckt. 131(emphasis added).

It appears Debtor’s argument that profit and loss statements were necessary was not forthcoming where the questionable increase to income was the fiancé’s contribution.

Fifth Amended Plan

Debtor’s Fifth Amended Plan calls for stepping up the payments even further—\$5,750.00 per month for 13 months; \$5,950.00 per month for 5 months; and \$5,970.00 per month for 42 months. Amended

Plan, Dckt. 148. Debtor argues this plan is feasible because Debtor's fiancé/"long term live in girl friend" has taken over as a full tenant of Debtor's residence (but allows Debtor to live there), and pays \$5,940 for rent. Motion, Dckt. 146 at ¶ 3.d.

Declarations of Debtor and Debtor's fiancé LaRay Chambers were filed in support of the Motion To Confirm Fifth Amended Plan. Dckts, 149, 150. Addressing the court's concerns, Debtor states under penalty of perjury:

My live in girlfriend has transitioned to my long term tenant and pay \$5940 in rent. Additionally, I have decreased my food spending so that I can set aside \$200-300 per month for my taxes each year. With my decreased net revenue this should be adequate to pay my annual income taxes.

Dckt. 149, at ¶ j.a. Debtor's fiancé states the following:

2. I am the long term live in girl friend of Craig Mason
3. I assist him in his accounting for his business and he assists me from time to time with my AirBnB business. Both of us do this as a favor for each other and not in a paid capacity.
4. My AirBnB business has been increasing and doing quite well. I have therefore decided to rent the entire house from the debtor at a rate of \$5940 per month.
5. I am further able to contribute from time to time when emergency or unforeseen expenses arise.

Dckt. 150.

Conclusion

In the film "Be Kind Rewind," ^{FN.1} the protagonists (running a video rental store) had been recording their own homemade renditions of major feature films after accidentally erasing the originals. In an attempt to skirt copyright infringement claims, one character (referencing the FBI copyright warning generally on films) argues, "But, we erased that!" This argument is essentially what Debtor seeks to use in his Fifth Amended Plan.

FN.1. *Be Kind Rewind*, Written and Directed by Michel Gondry, starring Jack Black, Mos Def, Melonie Diaz, Danny Glover, Mia Farrow and Sigourney Weaver, New Line Cinema, January 20, 2008.

At the November 20, 2018, hearing on the Motion To Confirm Debtor's Fourth Amended Plan, the court expressed concern that Debtor and his "fiancé" or "live in girl friend" were living as a family unit along with Debtor's two teenage children and fiance/girlfriend's teenage child. Civil Minutes, Dckt. 131. The Chapter 13 case was possibly being abused by Debtor who was reporting on Schedule J all the expenses of the family, but not all the income of the family, Debtor choosing to include only that much of fiance/girlfriend's income as was necessary to support the plan (and keeping the overall family income a mystery). *Id.* This was made more disturbing by the fact fiance/girlfriend's income was from renting out

Debtor's residence, which Debtor alone owns. *Id.*

In the Motion To Confirm Fifth Amended Plan, Debtor seeks to fix the problem by stating under penalty of perjury "My live in girlfriend has transitioned to my long term tenant." Dckt. 149, at ¶ j.a.

Rather than resolve, the Debtor has exacerbated the concern. Amended Schedule I reflects new "rental income" in the amount of \$5,940.00. Dckt. 153. However, Debtor (losing without explanation \$2,000.00 in "interest and dividends") arrives at nearly the same income as before (\$9,460.25 compared with prior income of \$9,398.00).

The court's "concern" that Debtor and his fiance/girlfriend are living as a family unit, sharing expenses and income, is now a concrete fact demonstrated by Debtor's ability to shift income and expenses at will. The fiance/girlfriend's income appears to be substantial where she can afford a \$5,940.00 a month rent payment on top of her other living expenses and still be "further able to contribute from time to time when emergency or unforeseen expenses arise." Dckt. 150 at ¶ 5.

Furthermore, Debtor and his fiance/girlfriend have provided testimony that is not credible. No living situation has changed. Debtor and the rest of the family unit reside at Debtor's residence. No lease agreement has been filed in support of the asserted change in circumstances. No evidence has been provided that the rent paid is fair market value for the residence (the post-petition payment for the mortgage is only \$3,500.00).

Debtor's last filed Schedule J, on July 7, 2017, Dckt. 27, lists (\$3,425) in "necessary" monthly expenses. This is for a family unit of four persons, for which Debtor will disclose only his income, not his fiancé's.

With Debtor's latest Supplemental Schedule I Debtor includes an income and expense statement for his business. Some of Debtor's necessary business expenses include:

(\$1,300) a month vehicle expense (\$895 for gas, \$336 for registration)
(\$ 918) a month in utilities (\$2,659 in November 2018)

Dckt. 153. Debtor's business stated on the Statement of Financial Affairs is "Evolution Group Inc," Dckt. 27 at 30, with the business being "Motorcycle Parts Resale."

The Fifth Amended Plan, and the Chapter 13 case does not appear to be filed and prosecuted in good faith. Debtor and his fiancé's partial disclosure of information and ready ability to "fix" whatever short coming in the partial financial information provided so that Debtor can continue to pursue the Plan is not credible. The lack of prosecution by Debtor has not been resolved by Debtor. The Motion is granted, and the case is dismissed.

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

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

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

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

February 20, 2019 at 10:00 a.m.
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continued to January 17, 2019;

2. Debtor filed her plan using EDC Form 3-080 rather than the current Form 003-080-12;
3. Debtor has not noticed interested parties of the Amended Plan;
4. Debtor failed to file business documents, including a Questionnaire, 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, or proof of license and insurance or a written statement that no such documentation exists.
5. Debtor failed to provide the Trustee with a tax transcript, tax return, or written statement that no such documentation exists for the most recent pre-petition filing tax year.

To date, no formal pleading titled Opposition has been filed by Debtor to the Motion to Dismiss. However, in light of the other several proceedings, appearances and arguments by Debtor's former counsel and her replacement counsel, and the new Motion to Confirm filed by Debtor's replacement counsel, the court treats the collective body of the filings, arguments, and representations as the opposition of this Debtor to continue in prosecution of a Chapter 13 case.

In part, the consideration is a simpler process with Debtor desiring to have a Chapter 13 case use the automatic stay or a plan stay in lieu of obtaining a preliminary injunction is a state court or district court action challenging the nonjudicial foreclosure sale on the 6500 Auburn Folsom Road, Granite Bay, California Property ("Property"). The process is made harder because Debtor has been unable to present to the court a proposed Chapter 13 plan that includes such action challenging the nonjudicial foreclosure sale as part of the plan and providing adequate protection, or Debtor prosecuting such action since she filed her First Chapter 13 Case, 18-25398, on August 28, 2018, now five and one-half months prior to this hearing.

PRIOR HEARINGS AND PROCEEDINGS

The court conducted an initial hearing on the Trustee's Motion to Dismiss on January 9, 2019. At that hearing, the Trustee reported that Debtor has not provided the personal and corporate tax returns for 2016, has not received all of the bank account statements, has not received the business questionnaire, and proof of license and insurance. Debtor's former counsel said that the documents had been transmitted by email and that she had documentation of the transmission.

At the hearing the court addressed with Debtor's former counsel the inadequacy of the plan form filed and the insufficiency of merely filing a motion to confirm such plan, without any supporting evidence, setting the motion for hearing, and failing to serve the pleadings and notice of hearing on the parties. Civil Minutes, Dckt. 89. The court did not find Debtor's former counsel's explanations adequate as to why no action, even the service of the complaint, in Adversary Proceeding 18-2195 had been taken. *Id.*

Debtor's former counsel stated that she now would, in January 2019, serve the Summons and Complaint in the Adversary Proceeding. The Summons was issued on December 6, 2018. Dckt. 3. As provided in Federal Rule of Bankruptcy Procedure 7004(e) the summons must be served withing seven days of it being issued. If not so timely served, then a new summons must be obtained.

Debtor's former counsel also advised the court that Debtor intended to prosecute a duplicate state court action, asserting the same claims and interests as in the Adversary Proceeding. Counsel offered no explanation as to how or why creating a parallel duplicate action in another court was appropriate.

Other Prior Proceedings in This Case and Prior Chapter 13 Cases

The present Chapter 13 case is the Debtor's third Chapter 13 Case ("Current Chapter 13 Case") in the past year, the prior to having been dismissed within one of the filing of this case.^{FN. 1} When this third case was filed, Debtor's former counsel filed a Motion to: (1) Set Aside Trustee Sale; and (2) Impose the Automatic Stay Pursuant to 11 U.S.C. § 362(c)(4)(B). Dckt. 11. The court imposed the stay on an interim basis through December 4, 2018. Amended Order, Dckt. 34. The court issued a final order imposing the automatic stay as to all parties, except BBV Profit Sharing Plan, the entity that asserts it has foreclosed on the real property commonly known as 6500 Auburn Folsom Road, Granite Bay, California. Final Order, Dckt. 59.

The court issued a Memorandum Opinion and Decision in connection with the Final Order. Decision, Dckt. 61. The court discusses the shortcomings in Debtor's disclosures under penalty of perjury in the Statement of Financial Affairs and the Schedules. This decision was influenced highly by Debtor and Debtor's former attorney arguing that the November 9, 2018 nonjudicial foreclosure sale needed to be set aside, that Debtor was first seeking to set it aside by having the court impose the automatic stay as provided in 11 U.S.C. § 362(c)(4)(B) [which as addressed in the Decision does not retroactively invalidate a foreclosure sale] and that Debtor was going to pursuing litigation to avoid the foreclosure sale and obtain injunctive relief in such action.

Request for Stay Pending Appeal of Order Imposing Automatic Stay

On January 11, 2019, Debtor and Debtor's former counsel filed a pleading titled "Request for Stay Pending Appeal. Dckt. 92. No supporting documents are filed with the Request, it was not served on any parties in interest, and was presented to the court *ex parte*. The court conducted an expedited hearing on the *ex parte* Request on January 15, 2019, in conjunction the continued hearing on this Motion to Dismiss the Chapter 13 case.

The court reviewed the grounds and relief sought in the Civil Minutes from the hearing. Dckt. 96. The review includes the Amended Schedules I and J filed by Debtor and Debtor's former counsel, the statements therein that Debtor and her non-debtor spouse have \$12,418 a month in income but pay no federal or state income or self-employment (non-debtor spouse stated to be self employed real estate broker), and the conflicting statements made concerning the debt owed to BBV Profit Sharing Plan that was the subject of the foreclosure sale. *Id.* at 6-7.

The court denied the *ex parte* Request without prejudice, noting that as filed, it appeared that Debtor and Debtor's former counsel were requesting that the court stay the order imposing the automatic stay in this case, not a motion to stay that portion which excluded BBV Profit Sharing Plan from the effect of such stay or for a temporary restraining order or preliminary injunction (for which a separate adversary proceeding is required, FED. R. BANKR. P. 7001). *Id.* at 11-15.

**Adversary Proceeding Filed by
Debtor and Debtor's Former Counsel**

As discussed in the Civil Minutes from the January 9, 2019 hearing on this Motion to Dismiss, Debtor and her former counsel had not served the summons and complaint for Adversary Proceeding Adversary Proceeding 18-2195 filed on December 6, 2018, which states a dozen causes of action, including: (1) the security interest is void (First Cause of Action), (2) rescission of the loan (Third Cause of Action); (3) fraud rendering the security interest unenforceable (Fourth Cause of Action), (4) cancellation of the written instrument (note) (Fifth Cause of Action), (5) unconscionability rendering the obligation unenforceable (Seventh Cause of Action), and (6) quiet title that the deed of trust is unenforceable (Eighth Cause of Action); in addition to various damages claims and avoiding the foreclosure (to the extent that the creditor has any rights and interests). Civil Minutes, Dckt. 91.

Chapter 13 Plans Filed by Debtor and Former Counsel

Debtor and her former counsel filed the First Chapter 13 Plan in this case on November 8, 2019, attached to the Petition, Schedules, and Statement of Financial Affairs. Dckt. 1 at 42-46. The terms of the First Chapter 13 Plan provided:

1. Debtor would fund the Plan with \$0.00 a month (Plan ¶ 2.01);
2. The Plan term was thirty-six months (Plan ¶ 2.03);
3. Debtor's attorney has been prepaid \$3,189 to represent Debtor in this bankruptcy case (Plan ¶ 3.08);
4. No Class 1 Claims were to be paid (Plan ¶ 3.09);
5. Class 2 Claims to be paid in full through the Plan were:
 - a. Capital Mortgage in the amount of \$392,601, and
 - b. Mortgage Lender Services in the amount of \$109,084 (Plan ¶ 3.11);
6. No Class 3, 4, 5, 6, or 7 Claims were provided for (Plan ¶¶ 3.14, 3.15, 3.17, 3.19, 3.20); and
7. No Additional Provisions were part of the First Chapter 13 Plan.

Debtor and Debtor's former counsel did not attempt to prosecute the First Chapter 13 Plan.

On November 29, 2018, Debtor and Debtor's former counsel filed a Second Chapter 13 Plan. Dckt. 46. This Second Chapter 13 Plan provides:

1. Debtor would fund the Plan with \$2,000.00 a month for fifty-five months, with an initial \$10,000 payment made in month 1 of the Plan. (Second Plan ¶ 2.01 and Section 7 Additional Provisions);
2. The Plan term was fifty-nine months (Second Plan ¶ 2.03);

3. Debtor's attorney has been prepaid \$3,189 to represent Debtor in this bankruptcy case (Second Plan ¶ 3.08);
4. Class 1 Claims to be paid in the Second Chapter 13 Plan were:
 - a. Capital Mortgage.....\$0.00
 - b. Mortgage Lender Services.....\$1,759 post-petition monthly payment (Plan ¶ 3.09);
5. No Class 2, 3, 4, 5, 6, or 7 Claims were provided for (Plan ¶¶ 2.11, 3.14, 3.15, 3.17, 3.19, 3.20); and

Debtor and Debtor's former counsel did not attempt to prosecute the Second Chapter 13 Plan until January 11, 2019, Debtor's former counsel filed a Motion to Confirm the Second Chapter 13 Plan. Motion, Dckt. 90. No evidence was filed in support of the Motion to Confirm, it was not set for hearing, and it was not served on any parties in interest. The grounds stated with particularity (FED. R. BANKR. P. 9013) in the Motion to Confirm consisted of:

1. Debtor requests that the First Amended Chapter 13 Plan, a true and correct copy which has been filed with the Court on November 29, 2018, be confirmed by the Court.
2. The First Amended Chapter 13 Plan proposes that Debtor pay an initial lump sum of \$10,000 and \$2,000.00 per month for the remaining 59 months of the Plan. Debtor has already forwarded the initial lump sum of \$10,000 to David Cusick's office.
3. The debtor has sufficient disposable monthly income to pay the required payments.
4. The debtor's First Amended Plan is proposed in good faith.
5. Debtor has submitted all the required documentation to Mr. Cusick's office.
6. The Debtor will appear at the continued 341 hearing currently scheduled for January 17, 2019, at 1:00 p.m.

These grounds do not appear sufficient to satisfy the confirmation requirements of 11 U.S.C. §§ 1322 and 1325.

**Bankruptcy Case and Issues as Presented by
Debtor and Debtor's Former Counsel**

The Current Chapter 13 Case has been presented by Debtor and Debtor's former counsel to the court as:

1. Debtor filed this third bankruptcy case, for which there had been two prior cases pending and dismissed within the prior year, on November 8, 2018;

2. Because of the two pending and dismissed bankruptcy cases within the prior year, the provisions of 11 U.S.C. § 362(c)(4)(A) prevented the automatic stay going into effect in this case and it was necessary for Debtor to obtain the issuance of a stay in this case pursuant to 11 U.S.C. § 362(c)(4)(B).

3. On November 9, 2018, BBV Profit Sharing Plan conducted a nonjudicial foreclosure sale of the 6500 Auburn Folsom Road Property, notwithstanding Debtor's former counsel's protestations that this third Chapter 13 case had been filed.

4. It was necessary for Debtor to pursue litigation to set aside the nonjudicial foreclosure sale. Debtor initially attempted to do this through the Motion to Impose Lien, believing that the court would also retroactively impose the stay in this case and invalidate the foreclosure sale. (11 U.S.C. § 362(c)(4)(C) expressly provides that the stay imposed by the court pursuant to 11 U.S.C. § 362(c)(4)(B) is effective from the date of the entry of the order imposing the stay, not effective retroactively.)

5. Debtor intended to pursue litigation, but had not served the now stale summons and complaint from the Adversary Proceeding and was considering filing a parallel action in state court with another counsel to be prosecuted in addition to the Adversary Proceeding.

On its face, there were few bankruptcy issues presented. A foreclosure sale was conducted that Debtor asserted could be set aside (the transfer of title reversed and the ownership of the Property returned to Debtor). Debtor would then pay the two creditors as provided in their notes. In the Adversary Proceeding the Debtor and her former counsel struck the alternative that the entire obligation asserted by BBV Profit Sharing Plan was void and there was nothing to pay on that asserted obligation.

FN. 1. Debtor's First Chapter 13 Case, 18-25398, ("First Chapter 13 Case") was Filed on August 28, 2018; Dismissed on September 17, 2019; and Closed on November 28, 2018. The First Chapter 13 Case was dismissed due to Debtor's failure to file a Chapter 13 Plan, Schedules, and Statement of Financial Affairs. It has been explained that Debtor filed the case in *pro se* due to the urgency in stopping the BBV Profit Sharing Plan foreclosure sale, with the assistance of attorneys in Los Angeles, California, which attorneys were suppose to substitute in as her counsel but failed to do so.

Debtor's Second Chapter 13 Case, 18-26000, ("Second Chapter 13 Case") was filed on September 23, 2018; Dismissed on October 12, 2018; and Closed on November 21, 2018. The Second Chapter 13 Case was dismissed due to the failure to file the Chapter 13 Plan. Debtor's former counsel, who was Debtor's counsel in the Second Chapter 13 Case, states that it was not filed due to a computer error. Though dismissed on October 12, 2018, and it being asserted that such dismissal should not have occurred due to a computer error, Debtor and her former counsel took no steps to vacate the dismissal and prosecute the Second Chapter 13 Case in the twenty-seven days between the dismissal of the Second Chapter 13 Case and the filing of the Current Third Chapter 13 Case.

In looking at the two prior cases, facts not presented to the court by Debtor and Debtor's former counsel or her replacement counsel are that the First Chapter 13 Case was not closed until November 28, 2018, nineteen days after the BBV Profit Sharing Plan nonjudicial foreclosure sale; and the Second Chapter 13 Case was not closed until November 21, 2018, twelve days after the nonjudicial foreclosure sale.

The First Chapter 13 Case was assigned to the Hon. Christopher M. Klein, who shares Chapter 13 cases with the judge to whom the Current Third Chapter 13 cases is assigned; and the Second Chapter 13 Case was assigned to the Hon. Michael S. McManus who has now retired from his service as a bankruptcy judge. In light of there being no substantive work having been done in either of the prior cases by either judge, the work done in this case, and the work of the current Chapter 13 Trustee, an order shall be entered transferring cases 18-25398 and 18-26000 will be transferred to the judge to whom the Current Third Case is assigned and the related Adversary Proceeding, the Hon. Ronald H. Sargis.

Substitution of Counsel

On January 14, 2019, Debtor and Debtor's former counsel filed a substitution of attorney by which they requested that Peter Macaluso be substitute in as counsel for Debtor in this bankruptcy case. Dckt. 93. The court entered the Order authorizing the substitution on January 22, 2019. Dckt. 103.

Interest of Debtor and Bankruptcy Estate in The Property

At the hearing, the court expressed concern, in light of the two unsuccessful bankruptcy case and the lack of prosecution in this case, that merely allowing this case to linger might leave Debtor and her spouse in a continued state of blissful somnolence, believing that somehow a bankruptcy case with no stay, no plan, and no state or federal court action to rescind the foreclosure sale was somehow protecting their interests.

If Debtor's Schedules are accurate, the real property ("Property") Debtor states was improperly foreclosed on has a value of \$750,000. Schedule A/B, Dckt. 37 at 1. Debtors identifies an undisputed first deed of trust securing a claim of (\$392,601) against the Property. That would leave \$350,000 in value at issue.

Debtor disputes the validity of the second deed of trust and obligation in the amount of \$113,000 purported to be secured by it. The Complaint filed in Adversary Proceeding 18-2195, states a dozen causes of action, including: (1) the security interest is void (First Cause of Action), (2) rescission of the loan (Third Cause of Action); (3) fraud rendering the security interest unenforceable (Fourth Cause of Action), (4) cancellation of the written instrument (note) (Fifth Cause of Action), (5) unconscionability rendering the obligation unenforceable (Seventh Cause of Action), and (6) quiet title that the deed of trust is unenforceable (Eighth Cause of Action); in addition to various damages claims and avoiding the foreclosure (to the extent that the creditor has any rights and interests).

Even if Debtor is correct and the sale can be set aside, but still owes the \$113,000, there would still be \$225,000+ in equity in the property to be "saved."

**AMENDED SCHEDULES AND AMENDED PLAN FILED
AND TO BE PROSECUTED BY
DEBTOR AND REPLACEMENT COUNSEL**

**Second Amended Schedule I and J
Filed by Debtor and Debtor's Replacement Counsel**

Debtor has filed a Second Amended Schedule I, dating back to the commencement of this case, in which she states under penalty of perjury that her non-debtor spouse has \$0.00 in income as a real estate broker. Dckt. 117 at 11-12. Thus, the only income for Debtor's family unit is:

Debtor's Net Wages.....\$2,353
Debtors' Business Income.....\$ 350
Debtor's k-1 Income.....\$6,146.

Id. Debtor now states that her non-debtor spouse, who has been self-employed for 11 years as a real estate broker has \$0.00 in income. *Id.*^{FN. 2.}

FN. 2. Debtor's non-debtor spouse having no income is curious, in that in response to the court's earlier question as to why the Debtor, who is represented to have limited English language skills and the non-debtor spouse is relied upon for attorney-client communications, keeps being put up as the sole debtor instead of there being a joint petition, it was represented to the court that the non-debtor spouse wanted to avoid a bankruptcy on his record for "business reasons." It appears, based on Second Amended Schedule I, that the non-debtor spouse does not have such "business reasons" concerns.

In her Original Schedule I in the Current Third Chapter 13 Case Debtor stated that her non-debtor spouse's income was "N/A" to the required financial disclosures when she sought bankruptcy relief. Dckt. 1 at 22. On the Statement of Financial Affairs Debtor provided incomplete income information (only listing the current year) and did not provide any income information for the non-debtor spouse. Statement of Financial Affairs Question 4, *Id.*

Then, on the First Amended Schedule I Debtor stated under penalty of perjury that her non-debtor spouse had gross monthly income as a real estate broker (having been so employed for 11 years) of \$2,545. Dckt. 41 at 1. On the Amended Statement of Financial Affairs Debtor again provided incomplete information, listing only the current year income for her, did not disclosed the required information for the two pre-petition years, and did not disclose any income for the non-debtor spouse. *Id.* at 2-3.

Debtor has now filed a Second Amended Statement of Financial Affairs, which now discloses the following gross income for Debtor and non-debtor Spouse:

	Debtor	Non-Debtor Spouse	Average Per Month
Jan - Oct 2018	\$25,632	\$91,837	\$11,746
2017	\$31,561	\$49,748	\$6,776

2016	\$29,436	\$0	\$2,453
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The above information is inconsistent with the information on the Second Amended Schedule I stating that Debtor has \$9,130 in Monthly Gross Income and Debtor's non-debtor Spouse has \$0.00 in gross income. Dckt. 117 at 11-12.

On Second Amended Schedule J, Debtor states the income for her household of herself, the non-debtor spouse, son, and 86 year old mother (for whom no income is given or contribution to the household expenses).

In looking at Second Amended Schedules I and J the Debtor states under penalty of perjury that for her purported \$9,130 in monthly gross income she does not have to pay any federal income taxes and does not have to pay any state income taxes. *Id.* at 11-14.

First Amended Plan Filed by Debtor and Debtor's Replacement Counsel

Debtor filed and set for confirmation hearing a First Amended Plan on February 10, 2019. Dckts. 107, 108. The plan provides for the full payment of the claim of BBV Profit Sharing Plan, but is "contingent" on Debtor's real property being reconveyed. The plan is not clear on whether the reconveyance is voluntary.

Debtor states in the Motion to Confirm that the \$118,000.00 paid to BBV Profit Sharing Plan will be made as a lump sum. Debtor lists in the plan unsecured claims of \$1.00.

Nowhere does Debtor indicate what the source of a \$118,000.00 lump sum payment will be.

Reviewing the Plan there are no other claims to be paid.

Debtor provides her Declaration in support of the Motion to Confirm the First Amended Chapter 13 Plan, in which she first testifies that her plan will be six months in length. Declaration ¶ 1; Dckt. 110. This does not appear to be accurate, as the Plan makes reference to the litigation that Debtor will have to file to try and avoid a non-judicial foreclosure sale which occurred the day after this case, the third bankruptcy that was filed after two prior cases were pending and dismissed within the prior year.

Debtor then proceeds to testify as to the reason she chose to file the current bankruptcy case, stating:

I filed for protection under the bankruptcy code because we disagreed with the balance on the account for the had money loan that we had and they were trying to foreclose. We hired Julia Young our second case, in which she failed to file the appropriate documents, and protect us with the automatic stay by failing to follow the Court's orders and procedures resulting in the case being dismissed. She then filed this third case but I did not have a stay for this case and is why I am asking for confirmation.

Id. ¶ 4. In this testimony Debtor appears to admit that there was no automatic stay in this, the third, bankruptcy case. See 11 U.S.C. § 362(c)(4)(A). ^{FN. 3.}

FN. 3. It has struck the court as curious that a mere dispute as to how much was owed would be the reason to file a bankruptcy case. Rather than the cost and expense of a bankruptcy case, a simple action on the contract in state court would bring such a dispute to a conclusion, likely pursuant to a judgment on the pleadings if the only dispute was on what the words on the note/contract provided. A bankruptcy case, if diligently prosecuted can present an effective alternative when the borrower has dallied in addressing the issue, is on the eve of foreclosure and is unsure about wanting to pay or cannot afford to post a bond for a preliminary injunction.

Interestingly, Debtor then proceeds to provide her testimony stating her legal opinion concerning the Bankruptcy Code, testifying:

It is our [apparently Debtor is attempting to testify for some other person] understanding that 11 U.S.C. 362(c) (1) "stays an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate, while 11 U.S.C. 349 governs the property of the estate which is in effect until the bankruptcy estate is closed. As the sale of the property occurred during the opened estate in the case the sale would be void.

Id. ¶ 5. The court is uncertain as to what Debtor (who has been previously represented to have limited English language skills and Debtor's prior had to rely on Debtor's husband for attorney-client communications with the Debtor, to communicate with the Debtor) is attempting to provide her legal opinion on this point.

The Motion to Confirm the First Amended Plan makes no reference to any "void" sale of Debtor's property. Motion, Dckt. 107. The proposed First Amended Plan does not include any such "void" sale and enforcement of rights, but merely that the plan is "contingent" on the property being reconveyed. Stating "reconveyed" indicates that the property was "conveyed" and such conveyance must be undone.

No points and authorities is filed with the Motion to Confirm the First Amended Plan providing any legal analysis or authorities relating to Debtor's legal opinion testimony.

Interests of the Debtor and the Bankruptcy Estate in the Current Third Chapter 13 Case

Though no pleadings have asserted, no points and authorities have stated, and no counsel for Debtor has argued, in her Declaration Debtor provides her personal legal opinion of the Bankruptcy Code and how it applies in this case, specifically:

[t]hat 11 U.S.C. 362(c) (1) "stays an act against property of the estate under subsection (a) (a) of this section continues until such property is no longer property of the estate[“], while 11 U.S.C. 349 governs the property of the estate which is in effect until the bankruptcy estate is closed. As the sale of the property occurred during the opened estate in the case the sale would be void.

As is well established law in the Ninth Circuit (and elsewhere), an act taken in violation of the automatic stay is void - not merely voidable. *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001), citing to *Schwartz v. United States of America (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992), which states:

Our decision today clarifies this area of the law by making clear that violations of the automatic stay are void, not voidable. See *In re Williams*, 124 Bankr. 311, 316-18 (Bankr. C.D. Cal. 1991) (recognizing that the Ninth Circuit adheres to the rule that violations of the automatic stay are void and criticizing the BAP decision in this case). . .

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his [or her] creditors. *It stops all collection efforts, all harassment, and all foreclosure actions.* It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97 (emphasis added).

Though not heretofore mentioned or argued, the non-attorney Debtor provides her legal analysis that the application of 11 U.S.C. § 349 governs the handling of property of the bankruptcy estate - which Code section applies in this case and the prior two cases. Congress provides in 11 U.S.C. § 349(b)(3) [emphasis added] the effect of a dismissal of a bankruptcy case, stating in pertinent part:

§ 349. Effect of dismissal

(b) Unless the court, for cause, orders otherwise, **a dismissal of a case** other than under section 742 of this title [not applicable in this Current Third Chapter 13 Case]--

...

(3) **revests the property** of the estate **in the entity** in which such property was vested immediately **before the commencement of the case** under this title.

This section does not make reference to the closing of a bankruptcy case, but what happens to property of the bankruptcy estate when the case is “dismissed.”

The court is uncertain as to the legal point and opinion that Debtor is stating in her declaration, but afforded her the opportunity to be called as a witness at the February 20, 2019 hearing to amplify her opinion in open court.

DISCUSSION

Even having retained replacement counsel, Debtor does not appear to be acting to prosecute the necessary litigation to try and set aside the nonjudicial foreclosure sale. Debtor makes no provision for such litigation in her First Amended Plan. Debtor makes no provision for adequately protecting the rights and

interests of BBV Profit Sharing Plan if Debtor is wrong and she cannot set aside the foreclosure sale, but has used the automatic stay in lieu of an injunction to deprive BBV Profit Sharing Plan of possession and use of the Property. See adequate protection discussion in *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

The Chapter 13 Plan, on its face, also fails to address the senior lien claim on the Property, the undisputed claim of Capital Mortgage stated on Amended Schedule D to be an obligation of (\$390,992) secured by the Auburn Folsom Road Property. Dckt. 118 at 4. No provision is made to pay this secured claim that encumbers the Property which Debtor states she owns or has the right to avoid the foreclosure sale of the Property.

The “Plan” as proposed is not a Chapter 13 Plan meeting the requirements imposed by Congress. Rather, it is a plan in which the Debtor gets her free injunction, can litigate without limit, and have no responsibility for having impaired the rights and interests of others. While it may be intended that one could imply that the plan infers that the monthly payments will constitute an adequate protection fund for BBV Profit Sharing Plan, it does not so provide.

It is clear that Debtor’s fight is either in the State Superior Court or the Federal District Court – not in the Bankruptcy Court. Debtor is free to diligently and aggressively prosecute such litigation (but heretofore has been lukewarm with respect to asserting such rights) and does not need, and is not attempting to use, a Chapter 13 Plan to so do.

Cause has been shown for dismissal of this case pursuant to 11 U.S.C. § 1307(d) including: (1) unreasonable delay that is prejudicial to creditors, (2) failure to timely file a plan that complies with 11 U.S.C. § 1321, and (3) failure to attempt to prosecute a confirmable plan.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on January 15, 2019. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is XXXXX.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the bankruptcy case of David Eugene Foyil ("Debtor") on the basis that Debtor is over the secured debt limit for a Chapter 13 case. On Debtor's Schedule D, Debtor lists secured claims totaling \$1,067,182.00. Schedule D, Dckt. 1. However, secured claims filed in this case, as shown by a review of the official claims registry, to-date total \$1,382,163.28. The claim of PennyMac alone amounts to \$1,325,661.73. Proof of Claims, No. 6.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Motion on February 5, 2019. Dckt. 42. Debtor does not oppose (although not conceding the amount of PennyMac's secured claim) the Motion, but notes a Motion To Convert the case to one under Chapter 11 has been filed. *See* Dckt. 38. Debtor requests the case be converted and not dismissed. Debtor states further he is capable of representing himself adequately in *Pro Se*, and will have a plan and disclosure filed before March 5, 2019.

OTHER CASES FILED BY DEBTOR

The court summarizes Debtor's past cases filed within the past 5 years as follows:

Case No.	Chapter No.	Attorney	Date Filed	Date Plan Confirmed	Date Dismissed	Reason Case Dismissed
11-31046	7	Pro Se	05/03/2011			Debtor Granted Discharge on August 8, 2012

12-35273	13	Pro Se	08/21/2012	None	07/16/2013	Debtor exceeds the Chapter 13 debt limits, Chapter 13 case filed with knowledge of debt limits exceeded, and prejudicial in inability to confirm plan during the eleven months of the case. 12-35273; Civil Minutes, Dckt. 152.
14-30670	11	Pro Se	10/29/2014	None	2/19/2015	Court raised doubts as to whether the case was filed and prosecuted in good faith due to failure to serve creditors, significant changes to Debtor's schedules, and failure to file monthly operating reports. 14-30670; Civil Minutes, Dckt. 72.
16-22194	11	Pro Se	4/6/2016	None	6/29/2016	Debtor failed to notify several creditors of the bankruptcy case in compliance with the rules; the court had significant concerns Debtor could not prosecute the case diligently. 16-22194; Civil Minutes, Dckt. 57.
18-26678	13	Pro Se	10/24/2018	None	11/16/2018	Failure to Timely File Documents
18-27524 Current Case	13	Pro Se	12/1/2018	None	-----	Debtor exceeded the debt limits and was not eligible for a Chapter 13

DISCUSSION

Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, secured debts” of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, Trustee argues and, the claims registry supports, Debtor owes \$1,382,163.28 in secured debt. At the least, Debtor would need to file Objections to various claims in order to meet the debt limit for a Chapter 13 case.

The Motion to Convert this case to one under Chapter 11 filed by the Debtor states the following grounds with particularity (Fed. R. Bankr. P. 9013):

1. This case has not been previously converted under Chapters 11 U.S.C. §§ 1112, 1208, or 1307. Motion ¶ 1, Dckt. 38.
2. Debtor is eligible to be a debtor in a Chapter 11 case. Motion ¶ 2.
3. Though Debtor does not concede the amount alleged to be due by Penny Mac Holdings, LLC, discovery will be required to determine the final amount. Debtor now believes that a Chapter 11 case is in his creditors’, and Debtor’s, best interests because it will not require payment of Chapter 13 Trustee fees, which Debtor now estimates to be in excess of \$50,000. Motion ¶ 5.

With respect to an alleged dispute as to the amount of the Penny Mac Holding, LLC claim, the court notes that the eligibility provisions of 11 U.S.C. § 109(e) does not exclude a claim from being included in the determination because the debtor disputes it.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$ 394,725 and noncontingent, liquidated, secured debts of less than \$ 1,184,200 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$ 394,725 and noncontingent, liquidated, secured debts of less than \$ 1,184,200 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e). The dismissal of Chapter 13 Case 12-35273 included the grounds that the secured claims exceeded the debt limits. In Debtor’s 2016 Chapter 11 case, 16-22194, PennyMac Holdings, LLC filed its secured claim for \$1,213,364.52. 16-22194, Proof of Claim No. 5-1. It appears undisputed that as of 2016, PennyMac Holdings, LLC was asserting a claim in excess of the current \$1,184,200 secured debt limit.

Proof of Claim No. 6-1 filed in Debtor’s current Chapter 13 case is for a \$1,325,661.73 secured claims, for which an arrearage of \$70,129.16. The Mortgage Proof of Claim Attachment to Proof of Claim No. 6-1 states that Debtor made a payment on June 15, 2017, August 16, 2017, and November 7, 2017, and no other payments during the period June 2017 through December 2018.

4. Debtor states that he is qualified to represent himself adequately in pro se, thereby avoiding any legal expenses that would be paid as an administrative priority in a

While making this statement, the court notes that Debtor has had four, and now possibly five, unsuccessfully prosecuted Chapter 13 and Chapter 11 bankruptcy cases since August 2012.

5. Debtor will file a proposed plan and disclosure statement by March 5, 2019. Motion ¶ 6.

As experienced Chapter 11 attorneys know, Chapter 11 plans and disclosure statements are not simple forms to be complete or pleadings that can quickly be “knocked out” (at least if they are to be successfully prosecuted). No exhibits are filed with the Motion and the court is not presented with draft versions of a plan and disclosure statement that Debtor is finalizing. It is a mere 15 days from the hearing on the Motion to Dismiss and the promised filing date of a good faith plan and disclosure statement that comply with the Bankruptcy Code. With no drafts presented, such appears to be a very short period of time for an attorney with an active practice to prosecute his own Chapter 11 case.

6. Debtor has not defaulted on the proposed Chapter 13 Plans in this case. Motion ¶ 7.
7. Pending confirmation, Debtor will make adequate protection payments to creditors with secured claims. Motion ¶ 8.

Debtor’s Declaration has been filed in support of the Motion to Convert. Declaration, Dckt. 40. It repeats the allegations in the Motion to Convert. No specifics are given concerning a Chapter 11 Plan, the terms of such plan, or what Debtor considers to be “adequate protection” payments to creditors with secured claims.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

FINAL RULINGS

35. [18-25269-E-13](#) **JOSEPH BERTOLINO** **MOTION TO DISMISS CASE**
[DPC-2](#) **Seth Hanson** **1-15-19 [26]**

Final Ruling: No appearance at the February 20, 2019 Hearing is required.

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

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor did not file an 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.

David Cusick (“the Chapter 13 Trustee”) argues that Joseph Bertolino (“Debtor”) did not commence making plan payments and is \$40,220.00 delinquent in plan payments, which represents multiple months of the \$10,055.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues further that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 6, 2019. Dckt. 23. 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).

RULING

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

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

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

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

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

36. [18-25901](#)-E-13 **RICHARD CAMP AND JACQULYN** **MOTION TO DISMISS CASE**
 [DPC-1](#) **BELL** **1-9-19 [19]**
 Mark Shmorgan

Final Ruling: No appearance at the February 20, 2019 hearing is required.

<p>The Motion is dismissed and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 15, 2019, Dckt. 26, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the 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 Trustee having been presented to the court, the 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 7041 and 9014, Dckt. 26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the February 20, 2019 Hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 23, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Francis Nelson (“Debtor”) did not commence making plan payments and is \$5,307.84 delinquent in plan payments, which represents multiple months of the \$2,653.92 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Based on claims filed by the IRS, the federal income tax return for the 2016 and 2017 tax years has not been filed still. Proof of Claim, No. 6. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

RULING

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

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 4, 2019. By the court's calculation, 47 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Jennifer Leigh Borba ("Debtor") is \$3,697.00 delinquent in plan payments, which represents multiple months of the \$1,349.00 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).

RULING

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

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 2, 2019. By the court's calculation, 49 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Michael David Sargenti ("Debtor") is \$4,292.65 delinquent in plan payments, which represents multiple months of the \$2,135.35 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 Chapter 13 Trustee argues further that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 11, 2018. Dckt. 23. 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).

RULING

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

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

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

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

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

40. [18-24602-E-13](#) **PATRICIA KOKASON** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Cianchetta** **1-3-19 [37]**

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 3, 2019. By the court’s calculation, 48 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that Patricia Ann Kokason (“Debtor”) is \$1,320.98 delinquent in plan payments, which represents slightly more than one month of the \$1,012.00 plan payment. Before the hearing, another plan payment will come due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the Chapter 13 Trustee argues that the Debtor’s Amended Plan filed on July 25, 2018 (Dckt. 9), has not been set for a confirmation hearing. Trustee also expressed this concern in his prior Motion to Dismiss filed on October 24, 2018. *See* Dckt. 29. 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).

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

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

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

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

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

41.	<u>18-26203-E-13</u> <u>DPC-2</u>	CATHERINE PORTER Peter Macaluso	MOTION TO DISMISS CASE 1-15-19 <u>[38]</u>
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Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2019, Dckt. 58; 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 Catherine Porter (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 58, and upon review

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

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

42. [17-24005-E-13](#) **STEPHAN SMITH AND** **MOTION TO DISMISS CASE**
[DPC-1](#) **MICHELLE AFFINITO** **1-14-19 [32]**
 Mikalah Liviakis

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2019, Dckt. 44; 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 Stephan Keith Smith and Michelle Victoria Affinito (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case because Michael Anthony Enos and Phyllis Ann Enos's ("Debtor") have not filed a new plan since their prior plan confirmation was denied by the court on December 12, 2018. Order, Dckt. 41.

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

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

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

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

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

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

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

44. [18-23912-E-13](#) **CHARENA GLASPER-NORRIS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Chad Johnson** **1-9-19 [18]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 6, 2019, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Charena M Glasper-Norris (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

45. [18-25322](#)-E-13 STEFAN POLANSKY
Michael Hays

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-18 [\[41\]](#)**

DEBTOR DISMISSED: 01/13/2019

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney], and Chapter 13 Trustee as stated on the Certificate of Service on December 29, 2018. The court computes that 53 days' notice has been provided.

The Order to Show Cause was issued due to Debtor's failure to pay filing fees. .

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 13, 2019 (Dckt. 45), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

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

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick, ("the Chapter 13 Trustee") argues that Kathryn Suzanne Monds ("Debtor") failed to notice all interested parties of the Chapter 13 Plan and set a confirmation hearing to date.

Debtor's plan was filed on October 8, 2018 (Dckt. 20), after the Trustee issued a 341 notice on October 3, 2018, Dckt. 16.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan or any such documents sought for by the Chapter 13 Trustee. 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).

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

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

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

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

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

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

47. [18-26629](#)-E-13 **DWAYNE MONEY**
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-18 [\[40\]](#)**

DEBTOR DISMISSED: 01/13/2019

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 29, 2018. The court computes that 53 days' notice has been provided.

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

<p>The Order to Show Cause is discharged as moot.</p>
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The court having dismissed this bankruptcy case by prior order filed on January 13, 2019 (Dckt. 47), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 10, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00a.m.

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

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

DEBTOR'S OPPOSITION

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

1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.
2. The debtors live-in Roommate who contributes all of her income to the household (her name is Lori Childe), lost her IHSS income in June and was unable to gain more income (from Disability) until early September.

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

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

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

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

OCTOBER 10, 2018 HEARING

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

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

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

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

Order, Dckt. 47. To be determined at the continued hearing is who the actual real party in interest is for the Debtor—whether it is the Debtor or a person with a power of attorney who must be appointed as a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014, and 1004.1.

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

NOVEMBER 14, 2018 HEARING

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

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

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

RULING

Debtor filed a Motion To Approve Nomination of Debtor's Representative on January 29, 2019. Dckt. 52. At the hearing on that motion, the court continued the hearing to March 20, 2019 at 10:00a.m. The court shall continue you the hearing on this Motion to that date.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00a.m.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 9, 2019. By the court’s calculation, 42 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Richard Vern Garlinghouse (“Debtor”) is \$4,203.65 delinquent in plan payments, which represents multiple months of the \$2,164.85 plan payment. Before the hearing, another plan payment will be due. As a result, Debtor will need to pay \$6,368.50 in order to be current with the plan before the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

50. [18-26342-E-7](#)
[DPC-2](#)

RUDY/KAREN MENDEZ
Anh Nguyen

MOTION TO DISMISS CASE
1-16-19 [\[42\]](#)

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 1, 2019, Dckt. 54; 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 Rudy and Karen Mendez (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2019, Dckt. 47; 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 Mathew Borre (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 9, 2019. By the court’s calculation, 42 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that John Chris Hatzis (“Debtor”) is \$22,660.00 delinquent in plan payments, which represents multiple months of the \$4,595.00 plan payment. Before the hearing, another plan payment will be due. Thus, the Debtor will need to pay \$27,255.00 in order to be current with the plan before the date of the hearing. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 5, 2019, Dckt. 38; 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 Theresa Phillips (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 12, 2019, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Monnalissa O’Dell (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 28, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 2, 2019. By the court's calculation, 49 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>The hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00a.m.</p>
--

David Cusick ("the Chapter 13 Trustee") argues that Rebecca Schlossarek ("Debtor") did not commence and is \$5,380.00 delinquent in plan payments. Additionally, Trustee argues no amended plan has been filed, served, and set for confirmation hearing since the court sustained Trustee's Objection To Confirmation of the current proposed plan on December 4, 2018. Dckt. 19.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 3, 2019. Dckt. 34. Debtor's counsel states that Debtor has recently passed away and requests additional time to discuss further case administration with Debtor's daughter and husband.

RULING

Based on testimony of Debtor's counsel, Debtor has passed away. The court shall continue the hearing on the Motion to March 20, 2019 at 10:00a.m. to allow Debtor's counsel and Debtor's family time to discuss further case administration.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to March 20, 2019 at 10:00a.m.

56. [17-24456-E-13](#) **MICHAEL BRISSETTE** **MOTION TO DISMISS CASE**
[DPC-1](#) **Peter Macaluso** **1-14-19 [26]**

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2019, Dckt. 41; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Michael Brissette (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 41, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

DEBTOR DISMISSED: 01/13/2019

Final Ruling: No appearance at the February 20, 2019 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 January 10, 2019. The court computes that 41 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on January 13, 2019 (Dckt. 46), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 6, 2019, Dckt. 57; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Anthony and Angel Gutierrez (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 57, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 1, 2019, Dckt. 32; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Adrea Tarver (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 32, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on February 6, 2019, Dckt. 69; 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 Hubert and Siobhan Evans (“Debtors”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 69, 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 February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2019, Dckt. 23; 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 Carrie Schaefer (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 23, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2019, Dckt. 22; 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 Karen Ridgle (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 22, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

The Motion To Dismiss is dismissed without prejudice and the Bankruptcy Case shall proceed in this court.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2019, Dckt. 58; 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 Cynthia Baker (“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 filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 58, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion To Dismiss is dismissed without prejudice.

Final Ruling: No appearance at the February 20, 2019 hearing is required.

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 January 30, 2019. By the court’s calculation, 21 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 -----.

<p>The hearing on the Motion to Dismiss is continued to February 21, 2019 at 11:00a.m.</p>

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the bankruptcy case of David Jerome Rynda (“Debtor”) on the basis that Debtor has not provided 60 days of employer pay advices, has not provided a copy or transcript of his tax return for the most recent prepetition filing year, and has not served and set for confirmation the Fourth Amended Plan.

DISCUSSION

A review of the docket shows Debtor served the Amended Plan and set the confirmation hearing by Motion on January 31, 2019. Dckts. 65-67. Furthermore, Debtor filed a Certificate of Service indicating Debtor’s 2015 and 2016 tax returns and pay advices for the 60 days preceding filing were provided to Trustee. Dckt. 70.

Despite having addressed Trustee’s grounds for dismissal, the court has already expressed concerns about Debtor case and Fourth Amended Plan at the February 12, 2019 hearing for a motion for relief in this case. Dckt. 78. The court provided the following discussion in that Contested Matter:

Review Fourth Amended Plan

The Debtor now has filed a Fourth Amended Plan filed on January 27, 2019. Dckt. 50. Under the terms of the Plan Debtor proposes:

Monthly Plan Payments.....\$2,197.19
Term of Plan.....36 Months

Administrative Expenses

Debtor Counsel Fees.....(\$ 111.11) per Month
Chapter 13 Trustee Fees.....(\$ 175.78) per Month

Class 1 Claims

Windrunner Property Secured Claim

Current Monthly Payment.....(\$1,280.42) per Month

(\$14,500) Arrearage Payment.....(\$ 467.743) per Month

Class 2 Claims

Lakeside HOA

(\$4,731.00) Arrearage Payment.....(\$ 152.61) per Month

Class 3 Surrender Claims.....None

Class 4 Direct Payments

Erika Leyva.....(\$100)

Erika Leyva.....(\$100)

John Rynda.....(\$100)

U.S. HUD.....(\$- 0-)

Class 5 Priority.....None

Class 7 General Unsecured Claims

(\$98,358.09) Claims.....0.00% Dividend

Missing Plan Term

The Fourth Amended Plan (as was the Third Amended Plan as addressed in this court' tentative ruling for the January 29, 2019 prior hearing on this Motion) is silent on the pending litigation over the ownership of the Windrunner Property. As shown from the Motion, there is pending litigation over ownership.

On the Amended Statement of Financial Affairs filed on January 27, 2019,

(Dckt. 51), the Debtor identifies the following pending litigation that is not provided for in the Chapter 13 Plan:

<i>Marriage of Carolina C. Rynda and David J. Rynda.</i> Creditor is David Hicks HF04 150159	Divorce	Sup. Court. California, Alameda County	Concluded
<i>Marriage of Elina Machado and Gabriel Machado</i> 17FL02730	Family law court lacked jurisdiction over debtor and his home. Family court ignored lack of jurisdiction, refused to look at quitclaim presented by debtor, ordered debtor vacate.	Sup. Court California, Sacramento County	On Appeal Appeals kick out order by family court for lack of subject matter and personal jurisdiction over debtor
<i>David J Rynda v Elina Machado and Gabriel Machado</i>	Quiet Title for debtor's home located at 9436 Windrunner Ln., Elk Grove, CA.	Superior Court, Sacramento County	On Appeal Debtor appeals kick out order by family court for lack of subject matter and personal jurisdiction over debtor.

The Fourth Amended Plan assumes that Debtor owns the Windrunner Property, Debtor will make the mortgage payments on the Windrunner Property, and Debtor makes no provision to litigate his asserted rights and interests. While the bankruptcy case appears to be holding the foreclosure at bay, it does not addressing the substantive dispute.

**Absence of Motion
(as required under federal law and procedure)
to Confirm Chapter 13 Plan**

On January 31, 2019, Debtor's counsel filed a pleading titled "Notion of Motion and Motion to Confirm Debtor's Fourth Amended Plan. Dckt. 65. The footer at the bottom of this Notice and Motion form is that for Best Case Software.

As provided under the Local Bankruptcy Rules, the notice, the motion, each declaration, and the exhibits (which may be combined into a unified exhibit

document) must be filed as separate pleadings. L.B.R. 9004(c), (d); 9014(d)(4).

A motion filed in federal court must state with particularity the grounds upon which the requested relief is based, as well as the relief itself. FED. R. BANKR. P. 9013. Here, the Motion, which is a combined notice and motion, states the following grounds with particularity:

- A. Debtor has filed papers with the court to confirm the Fourth Amended Plan.
- B. Your rights may be affected.
- C. If you do not want the Fourth Amended Plan to be confirmed, you must file a written opposition at least fourteen days before the March 12, 2019 hearing on the motion to confirm.
- D. If you do not take such steps to oppose, the court may grant the relief sought in the motion.

Notice of Motion and Motion, Dckt. 65.

The “grounds” stated in the Motion are insufficient to grant the relief requested - Confirmation of the Fourth Amended Plan. The pleading filed is not a motion, but merely a notice. A review of the docket discloses that:

- No motion stating grounds requesting relief has been filed;
- No declaration or documentary evidence has been filed in support of confirming the Fourth Amended Plan;
- No points and authorities has been filed in support of confirming the Fourth Amended Plan.

Nothing more has been done other than filing a document with a title that includes the word “Motion” in it.

Debtor is not prosecuting a Chapter 13 Plan to be confirmed in this case. Rather, it appears that Debtor is seeking to use a form of state court practice in which a mere notice is given and the parties are then forced to construct for the “movant” the motion and supporting pleadings. Though some may in some circumstances get away with such practices in state court, such is not permitted in federal court.

**Absence of Provisions For Adequate Protection
For Use of Bankruptcy Stay in Lieu of State or
Federal Court Injunction**

At the prior hearing the court had an extensive discussion with the respective counsel for the parties concerning the use of a bankruptcy stay in lieu of

getting an injunction in a state or federal (Fed. R. Civ. P. 65/Fed. R. Bankr. P. 7065) lawsuit . Possibly, paying the current mortgage payments, curing the arrearage, paying the current HOA fees, and curing the HOA arrearage could be terms of a plan that would provide adequate protection while the automatic stay was used in lieu of the injunction (and required injunction bond). Such adequate protection provisions would be placed in the Additional Provisions - no such provisions are made by Debtor.

Additionally, the provisions would address what would happen in the event that the Debtor loses on appeal, the effect of any bankruptcy stay under the Plan, and termination of such stay under the Plan. No such provisions are made by Debtor.

The Plan, as discussed below, seeks to treat the Property in dispute as being the Debtor's property, ignoring the asserted rights and interests (which so far have been determined to exist by the State Court). The Plan could be misconstrued, and possibly misused in the State Court proceedings, to misrepresent that there is some sort of federal order that determines the rights and interests of the Property as being the Debtor's, and after the Plan is completed, there can be no dispute of such "rights."

Civil Minutes, Dckt. 78.

RULING

As discussed by the court before, Debtor is not prosecuting a Chapter 13 Plan to be confirmed in this case. Rather, it appears that Debtor is seeking to use a form of state court practice in which a mere notice is given and the parties are then forced to construct for the "movant" the motion and supporting pleadings.

Because the life of the case appears to hinge on the outcome of the state court litigation, the court shall continue the hearing on the Motion to February 21, 2019 at 11:00a.m. to be heard alongside the Motion For Relief.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to February 21, 2019 at 11:00a.m.