

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

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

**February 22, 2023 at 9:00 a.m.**

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1. <a href="#"><u>21-23936-E-13</u></a> <a href="#"><u>DPC-1</u></a>	SOPHEA UCH-CASTILLANO Tegan Rodkey	MOTION TO DISMISS CASE 1-23-23 <a href="#"><u>[19]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 23, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Sophea Uch-Castillano (“Debtor”), is delinquent in plan payments.

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 7, 2023. Dckt. 26. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 23, 25.

The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 that requires that a motion state the grounds with particularity. Debtor's Motion to Confirm states the following grounds:

1. The First Modified Plan cures the delinquencies through February 25, 2023.
2. The dividend to creditors holding general unsecured claims is not altered and remains at 0.00%.
3. Debtor proposes to cure the delinquency in plan payments by March 1, 2023.
4. Debtor defaulted due to extra expenses relating to transportation, food, and medical.

These are not the grounds required for confirmation of a modified plan pursuant to 11 U.S.C. § 1329.

#### Federal Rule of Bankruptcy Procedure 9013 Issues

The court addressed with attorneys a decade ago the pleading requirements for motions both under Federal Rule of Civil Procedure 7(b) and Federal Rule of Bankruptcy Procedure 9013. As the attorneys complied with the Federal Rule of Bankruptcy Procedure as enacted by the U.S. Supreme Court, this has not been required to update. The court includes it here to provide a good overview of these requirements.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the United States Supreme Court in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the stating with particularity requirement of Bankruptcy Rule 9013. The Twombly pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" is insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the

law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

*Weatherford*, 434 B.R. at 649-650; see also *In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the stating with particularity pleading requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] shall state with particularity the grounds therefor, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's Federal Practice, para. 7.05, at 1543 (3d ed. 1975).

*Martinez v. Trainor*, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not stating with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Additionally, in bankruptcy court the vast majority of substantive matters are determined on the rapid law and motion calendar. Given only a twenty-eight to forty-two day notice periods for hearings on motions in bankruptcy court for the determination (or termination) of rights and interest, clear, precise, pleading with particularity is at a premium.

Finally, though an attorney may argue that his or her writing is so good that the court can and should waive this basic rule of pleading, the court will not engage in a differential application of the Rules. Request the court to tell one attorney that is or her work is good enough to be exempt from the Rules and another attorney must comply with the Rules is to send the court on a fool's errand. Though in an academic sense one might be able to distinguish based on such quality differences, it inevitably creates the appearance that the judge is not impartial, but has her or her "favorite" attorneys who get whatever they ask for from the judge.

At the hearing, counsel for Debtor addressed the issue of grounds being stated with particularity,

XXXXXXX

#### Declaration Issues - Personal Knowledge Testimony Required

Debtor provides her Declaration to provide personal knowledge testimony as evidence of facts for the grounds stated with particularity in the Motion, which include:

2. Debtor has filed a modified plan.
3. The Chapter 13 Plan confirmed in this case, which required monthly payments of \$764.69 for 60 months.
5. Debtor is delinquent in plan payments. Debtor then states her personal factual finding that "I do have the ability to cure the delinquency of my Chapter 13 Plan."
6. Debtor provides her legal conclusion that "The Chapter 13 Plan complies with applicable law."
8. Debtor provides her factual finding that the "Plan is proposed in good faith," and then her legal conclusion that the Plan "is not by any means forbidden by law."
11. Debtor provides her legal conclusion that "The First Modified Plan meets the requirements under 11 U.S.C. §§ 1325 and 1322."
12. Debtor provides her legal conclusion that the "First Modified Plan meets the requirements of CMI required under 11 U.S.C. § 1325(b)(1)."
14. Debtor provides her factual finding and legal conclusion that "The Petition was filed in good faith."

No basis has been shown for Debtor having the legal training and knowledge to have any ability to in good faith and with any knowledge that various bankruptcy laws have been complied with. This "testimony" is

clearly improper and violates or fails to comply with the requirements of Federal Rules of Evidence 602, 701, 702, and 703.

At the hearing Debtor's counsel addressed how the Declaration provides personal knowledge testimony as required by the Federal Rules of Evidence. Additionally, how the testimony provides evidence of the grounds stated in the Motion to Confirm that depends on the Declaration.

Counsel for Debtor stated, **XXXXXXX**

### **Issues Relating to Good Faith**

It appears that this bankruptcy case is not being prosecuted in good faith. No good faith basis appears to exist for Debtor to make the above statements under penalty of perjury. Rather, if the Debtor read this Declaration, then she knowingly signed in without any personal knowledge of the legal conclusions she stated.

Debtor's credibility appears to be so impaired that there is no plan that can be confirmed in this case. It may well be that only by the dismissal of this case, if Debtor decides to commence another case, will she appreciate that making statements under penalty of perjury constitutes "real testimony" and providing false testimony has consequences.

### **Dismissal of Case**

~~\_\_\_\_\_ The Motion is granted/denied and this case is not dismissed for cause. Debtor has been unable to, and does not appear to be prosecuting, or able to prosecute, a Modified Plan, which is the defense to this Motion.~~

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on November 15, 2022. 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 opposition was presented.

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

1. the debtor, William Donald Reddin ("Debtor"), is delinquent in Plan payments to the Trustee.

## DISCUSSION

### Delinquent

Debtor is \$28,500.00 delinquent in plan payments, which represents multiple months of the \$3,500.00 plan payment. Before the hearing, another plan payment will be due. Trustee states that Debtor has not paid since September 6, 2022, and has made only three payments in the last six months. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, counsel for the Trustee reported that Debtor has cured about half the default, remaining \$18,000 delinquent.

Counsel for Debtor stated that Debtor will be caught up. Counsel for Debtor reported that a second payment is in process and the default will shortly be cured.

This is a 100% dividend for general unsecured claims, with there being a very limited number of creditors. The Parties in attendance concurred with the continuance of the hearing to allow Debtor to cure the default and continue in performance of the Plan.

#### **January 4, 2023 Hearing**

At the hearing, the Trustee reports that Debtor is now \$21,500 delinquent. Debtor's counsel reported that a \$17,500.00 cashier's check has been mailed the last week of December 2022, by Debtor to the Trustee's bank in Chicago (a central bank commonly used by Chapter 13 trustees).

In light of the reported payment in process, this being a 100% plan, and there being only two creditors, the Trustee requested that the hearing be continued to February 2023.

In addressing the defaults with Debtor's counsel and the Trustee's concern that since Debtor is self-employed, that the Debtor may not be as focused on making the payments compared to "running the business." The court noted that it appeared that Debtor was forgoing making the monthly payments to use the money in the business until called to task by the Trustee on a motion to dismiss.

Therefore, as a condition of continuing the hearing, the court requires Debtor to make all future monthly plan payments electronically using the TFS payment service, with the monthly EFT being authorized for the term of the plan (and not monthly by the Debtor), and that if the Debtor is not current as of the continued hearing date the case will be dismissed.

#### **February 22, 2023 Hearing**

At the hearing, **xxxxx**

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, Debtor's counsel representing to the court that another lump sum cure payment is in process, there now having been multiple month defaults that Debtor has cured with large lump sum payments when faced with a Motion to Dismiss, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who filed a Request for Notice and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Judith Beverly Hart (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 9, 2023. Dckt. 113. Debtor states she is in the process of modifying her Chapter 13 Plan and will be unable to cure her delinquency prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$6,420.11 delinquent in plan payments, which represents multiple months of the \$1,573.55 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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



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

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

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

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

4. [18-26402-E-13](#)      **DENNIS/ROBIN COBB**      **MOTION TO DISMISS CASE**  
[DPC-6](#)      **Mary Ellen Terranella**      **1-12-23 [119]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on January 12, 2023. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

1. the debtors, Dennis Samuel Cobb and robin Karen Cobb (“Debtors”), are delinquent in plan payments

## **DISCUSSION**

### **Delinquent**

Debtors are \$20,091.82 delinquent in plan payments, which represents multiple months of the \$4,941.76 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXXXXXXX.**

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

1. the debtor, Michael C. Yang ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 21, 2022. Dckt. 86. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,732.19 delinquent in plan payments, which represents multiple months of the \$2,649.33 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 Debtor is still delinquent, but Debtor's counsel has provided information to the Trustee that Debtor has the money to make the payment and will promptly cure the defaults. The Trustee concurred in a continuance to 9:00 a.m. on February 22, 2023.

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

Trustee filed a Status Report on February 8, 2023. Dckt. 91. Trustee states Debtor still remains delinquent in the amount of \$2,630.85.

## February 22, 2023 Hearing

At the hearing, **xxxxxx**

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

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

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

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

6. [18-24104-E-13](#)      **MATHEW/CRYSTAL BRUNELLO**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Gary Fraley**      **1-24-23 [18]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 24, 2023. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtors, Mathew Louis Brunello and Crystal Rae Brunello (“Debtors”), are delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtors filed an Opposition on February 8, 2023. Dckt. 22. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtors are \$2,253.76 delinquent in plan payments, which represents multiple months of the \$756.11 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Eric Lynn Dickson and Sheri Lynn Dickson (“Debtor”), are delinquent in plan payments.

## **DEBTOR’S DECLARATION**

Debtor’s Counsel filed a Declaration on February 7, 2023. Dckt. 65. Counsel states Debtor has brought themselves current.

## **DISCUSSION**

Debtor is \$8,622.00 delinquent in plan payments, which represents multiple months of the \$2,622.00 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’s Counsel, a promise they paid is not evidence that resolves this Motion.

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

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

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

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

8. [20-22006-E-13](#)      **BROOKS PARFITT**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Thomas Amberg**      **1-17-23 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on January 17, 2023. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

<b><del>The Motion to Dismiss is denied without prejudice.</del></b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Brooks Parfitt (“Debtor”), is delinquent on plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 47. Debtor states a Modified Plan has been filed and Debtor is current under the terms of the Modified Plan.

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

Debtor filed a Modified Plan and Motion to Confirm on February 7, 2023. Dckts. 40, 42.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 40, 44. The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity). The grounds stated with particularity to show that the requirements of 11 U.S.C. § 1329 for confirmation of a modified plan are:

1. Debtor seeks to modify a confirmed plan.
2. Debtor filed bankruptcy on April 9, 2020.
3. Debtor confirmed a bankruptcy plan on June 11, 2020.
4. Debtor confirmed a modified plan on August 17, 2020.
5. Since confirmation of the modified plan, Debtor has defaulted and has fallen behind in 1.5 of the required monthly payments, caused by increase in expenses.
6. Debtor has received cost of living raises since this case was filed.
7. Debtor supports the above statements by a declaration.
8. Debtor's liquidation analysis is stated in his declaration. Nothing about the liquidation analysis and what is being asserted as grounds for confirmation are not stated.

Thus, based on the above grounds, Debtor requests the court enter an order confirming the Plan.

A review of 11 U.S.C. § 1329, which incorporates requirements from §§ 1325 and 1322, shows that the grounds for confirming a modified Chapter 13 plan are more than what is stated above,

At the hearing, **XXXXXXX**

Debtor has provided a Declaration I support of confirmation. Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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



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

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

9. [22-23006-E-13](#)

**BRIANNA GALLIER**  
**Matthew DeCaminada**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
1-25-23 [\[28\]](#)**

9 thru 11

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 26 and 27, 2023. The court computes that 26 and 27 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$78.00 due on January 20, 2023.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
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The court’s docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00 due on January 20, 2023.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Person who have filed Request for Notice and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Brianna Gallier ("Debtor"), is delinquent on plan payments,
2. Debtor has failed to provide tax returns and provide pay advices, and
3. Debtor inaccurately filed Chapter 13 Schedules.

## DISCUSSION

### Delinquent

Debtor is \$3,012.00 delinquent in plan payments, which represents two months of the \$1,506.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Delay of Confirmation

Debtor did not file a Motion to Confirm Amended Plan following the filing of the Plan on November 18, 2022. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

### **Inaccurate Chapter 13 Schedule**

Debtor has not accurately filed Chapter 13 Schedules. Debtor stated in the First Meeting of Creditors that she paid a security deposit of \$1,500.00 for rental space of a trailer. The Chapter 13 Schedules do not reflect this payment.

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

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 28 and 29, 2022. The court computes that 55 and 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on December 21, 2022.

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

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

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

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

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

**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, Persons who have filed a Request for Notice and Office of the United States Trustee on January 23, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Angelita Adams ("Debtor"), is delinquent on plan payments

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 8, 2023. Dckt. 85. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,078.00 delinquent in plan payments, which represents multiple months of the \$3,760.30 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

13. [19-21015-E-13](#)      **CAVIN SMITH/DIANA AGUILAR**      **MOTION TO DISMISS CASE**  
[DPC-5](#)      **Scott Hughes**      **1-17-23 [62]**

**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, Office of the United States Trustee, and persons who have filed a Request for Notice on January 17, 2023. 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).

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

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

1. The debtors, Calvin W. Smith and Diana C. Aguilar (“Debtor”), are delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on January 26, 2023. Dckt. 66. Debtor states the delinquency will be cured prior to the hearing date. *Id.*

#### **DISCUSSION**

## **Delinquent**

Debtor is \$3,605.04 delinquent in plan payments, which represents more than one month of the \$2,264.47 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. By the court’s calculation, 36 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. The debtor, Antionette Woods (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 99. Debtor states their delinquency is due to a temporary reduction in income. *Id.* Debtor was injured and collected workers compensation, which impacted her ability to make the Chapter 13 payment. *Id.* Debtor has indicated their intent to file a modified Chapter 13 plan. Dckt. 100.

## **DISCUSSION**

### **Delinquent**



Debtor is \$2,960.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

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, Office of the United States Trustee, and persons who have filed a Request for Notice on January 23, 2023. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtors, Luciano A. Ventura and Magelin R. Ventura ("Debtor"), are delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$5,417.29 delinquent in plan payments, which represents more than one month of the \$3,464.62 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

16. [18-27027](#)-E-13  
[DPC](#)-4

**TAMMY/BETTY  
POTTER-GODDARD  
Bonnie Baker**

**MOTION TO DISMISS CASE  
1-17-23 [161](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. The debtors, Tammy Lou Potter Goddard and Betty Ann Potter Goddard (“Debtor”), are delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 8, 2023. Dckt. 165. Debtor states that the delinquency was inadvertent and due to a misunderstanding of the amount of the payments. *Id.* Debtor notes that they have routinely made every monthly payment and believed they were current. *Id.* Debtor proposes a payment plan to cure the deficiency by March 1, 2023. *Id.*

Debtor requests a continuance of this motion until either March 28, 2023 or April 11, 2023, with the condition that the trustee can dismiss their continued motion if the Debtor is current. *Id.* If the Debtor is not current by that time, Debtor will file a Motion for Modification to incorporate any remaining arrears into their plan payments. *Id.*

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,980.26 delinquent in plan payments, which represents multiple months of the \$1,395.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

Local Rule 9014-1(f)(1) Motion—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 12, 2023. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Convert 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). The defaults of the non-responding parties and other parties in interest are entered.

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

This Motion to Convert the Chapter 13 bankruptcy case of Grant Douglas Haney, III ("Debtor") has been filed by David P. Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The Debtor is delinquent in Plan Payments.
- B. The Debtor does not have a Plan pending.
- C. Conversion, rather than dismissal, is in the best interest of the Creditors and the Estate. The non-exempt equity in the amount of \$105,824.00 will be realized upon liquidation of the real property located at 823 W Suter Island Cross Road, Courtland, CA 95615, valued at \$650,000.00, as seen in the Debtor's Schedule A/B.

## DEBTOR'S RESPONSE

Debtor filed Response on February 8, 2023. Dckt. 38. Debtor states that the case should not be converted to Chapter 7, the case should not be dismissed, and any other relief the Court deems just and proper.

Further, Debtor indicates that a motion to confirm will be filed prior to the hearing date.

As of the court's February 19, 2023 review of the Docket, no Amended Plan has been filed, and no motion to confirm has been filed.

## **APPLICABLE LAW**

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

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,794.00 delinquent in plan payments, which represents two months of the \$6,397.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Plan Pending**

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 15, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Convert the Chapter 13 case filed by David P. 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

18. <a href="#">22-20239-E-13</a>	<b>BETHANY JOHNSON</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	<b>Peter Macaluso</b>	<b>1-25-23 [66]</b>

**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, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The Debtor, Bethany E. Johnson is delinquent in Plan Payments.

2. The Trustee does not believe the amount of non-exempt equity warrants converting the case to a Chapter 7. The non-exempt equity listed in Debtor's schedule A/B amounts to \$1,318.73

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 70. Debtor states that Debtor has paid a total of \$14,000.00 to the Chapter 13 Trustee and will file, set, and serve a plan on or before this matter.

## **DISCUSSION**

### **Delinquent**

Debtor is \$13,452.41 delinquent in plan payments, which represents multiple months of the \$2,809.75 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 new Plan is not evidence that resolves this Motion.

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

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

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

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



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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor [pro se], and Office of the United States Trustee on February 7, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. The debtor, Courtney A. Mejia ("Debtor") failed to appear at the Meeting of the Creditors.
2. Debtor has failed to provide Tax Returns and Pay Advices.
3. Trustee recommends dismissal based on the \$262.50 of non-exempt equity.

## DISCUSSION

### Failed to Appear at Meeting of Creditors

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

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

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

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Kenneth Roger Tabor ("Debtor"), is delinquent in Plan Payments.
2. Trustee recommends dismissal because Debtor is in a confirmed 100% plan and has paid such a large amount. There is \$449,750.00 of non-exempt equity.

## DEBTOR'S RESPONSE

Debtor filed a Response on February 7, 2023. Dckt. 259. Debtor states the delinquency will be cured prior to the hearing date or propose a confirmable modified plan prior to the hearing date on this matter.

## DISCUSSION

Debtor is \$5,835.00 delinquent in plan payments, which represents multiple months of the \$1,945.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

21. [21-23849-E-13](#)      **PAUL-MATTHEW FERNANDES**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Thomas Amberg**      **1-25-23 [31]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Paul-Matthew Santos Fernandes (“Debtor”), is delinquent in Plan Payments.
2. Trustee recommends dismissal based on the \$2,175.00 of non-exempt equity.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 8, 2023. Dckt. 35. Debtor's counsel states that they are unable to get in contact with Debtor via phone, email, or mail. Presently, Debtor's counsel has no basis to oppose Trustee's motion but seeks the matter be listed as a "tentative" ruling to allow Debtor's counsel additional time to try and reach the Debtor.

## **DISCUSSION**

### **Delinquent**

Debtor is \$29,936.76 delinquent in plan payments, which represents multiple months of the \$6,028.76 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 court shall issue an order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Robbie Allan Holcomb and Christi Anna Holcomb (“Debtor”), is delinquent in Plan Payments.
2. Debtor’s Plan runs over the confirmed term and is over 60 months
3. Trustee recommends dismissal because the unsecured claims have been paid in full, in the amount of \$28,493.18. Debtor has \$20,750.00 in non-exempt equity.

## DEBTOR’S RESPONSE

Debtor filed a Response on February 7, 2023. Dckt. 148. Debtor states the delinquency will be cured prior to the hearing date, by February 16, 2023. Further, Debtor requests that they be allowed to make a payment of \$1,045.00 on February 28, 2023, which will cure the remaining default. Debtors have approximately two months remaining in their Chapter 13 Plan and are willing and able to make the final payments.

## DISCUSSION

### Delinquent

Debtor is \$5,130.00 delinquent in plan payments, which represents multiple months of the \$1,040.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

23. <a href="#">22-21656-E-13</a> <a href="#">DPC-2</a>	<b>ERROL QUOCK AND IRENE WONG</b> <b>Michael Mahon</b>	<b>MOTION TO DISMISS CASE</b> <b>1-18-23 [59]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 18, 2023. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Errol Quock and Irene Chi-Wia Wong (“Debtor”), has no Plan Pending.

2. Trustee recommends dismissal based on the \$320,131.00 of non-exempt equity.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 65. Debtor states a Modified Plan will be filed and requests the Motion to Dismiss be continued six weeks out.

## **DISCUSSION**

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 29, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



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

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

-----

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 (*pro se*), and Office of the United States Trustee on February 1, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Shasta Je’nae King (“Debtor”), is delinquent in Plan Payments.
2. Debtor failed to appear at the First Meeting of Creditors.
3. Debtor has failed to provide Tax Returns and Pay Advices.
4. Trustee recommends dismissal based on the \$806.19 of non-exempt equity.

## DISCUSSION

### Failed to Commence Plan Payments

Debtor did not commence making plan payments and is \$400.00 delinquent in plan payments, which represents one month of the \$400.00 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.

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

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

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

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

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

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

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

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

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

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

25 thru 27

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

-----

The Order Setting the Hearing on Debtor's Motion to Dismiss was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 7 and 8, 2023. The court computes that 14 and 15 days' notice has been provided.

**The Motion to Dismiss is XXXXXXXXXXXX**

Debtor Nathaniel Basloa Sobayo commenced this Chapter 13 Case on November 3, 2022. As the court addressed in a detailed Memorandum Opinion and Decision denying Debtor's request for reconsider on granting relief from the automatic stay to allow the lessor of an apartment and Debtor litigate their disputes in State Court and denying Debtor's request to stay all proceedings in this bankruptcy case and a related adversary proceeding, this is not Debtor's only recent filing. Mem. and Dec.; Dckt. 131. This Debtor's fourth Chapter 13 case, with the prior three being: Bkcy N.D. Cal. 18-52678, Dismissed February 4, 2019; Bkcy N.D. Cal. 19-50887, Dismissed August 18, 2022; and Bkcy E.D. Cal. 22-20063, Dismissed September 14, 2022. In the two prior cases and this case, Debtor pleads for more time because he is seeking to obtain Zealous and Loyal counsel to represent him. Debtor began seeking such stay of bankruptcy proceedings and continuances as early as July 22, 2019, in his second Northern District of California bankruptcy Case. Mem. and Dec., pp. 4:17-28, 5:1-4, 6:6-9; *Id.* This search has been ongoing for the past forty (40) months.

On January 17, 2023, the Chapter 13 Trustee filed a Motion to Convert this Case to one under Chapter 7. Dckt. 104. The grounds stated by the Trustee for conversion include: (1) Debtor failing to make any plan payments; (2) Debtor not filing tax returns for 2019, 2020, and 2021; (3) Debtor not providing business and other financial records; (4) Debtor having filed a series of Chapter 13 cases over the past four years and not being able to prosecute any of them (each of the prior three having been dismissed); and (4) the bankruptcy estate having (based on Debtor's information under penalty of perjury in the Schedules) \$12,767,215.00 in nonexempt equity. The Trustee recommends conversion, rather than dismissal, as being in the best interests of the Bankruptcy Estate and creditors. *Id.*, p. 3.

The hearing on the Trustee's Motion to Convert is set for 9:00 a.m. on February 22, 2023.

#### **Debtor's *Ex Parte* Motion to Dismiss**

On February 6, 2023, Debtor filed a Central District of California Form, Debtor's Motion for Voluntary Dismissal of Chapter 13 Case. Dckt. 137. The grounds stated by Debtor are: (1) this voluntary Chapter 13 Case has not been converted under 11 U.S.C. §§ 706, 1112, or 1208; and (2):

SINCE THE BEGINING [sic.] OF THIS QUAGMIRES DEBTOR HAS HIRED FOUR ATTORNEYS AND OR LAW FIRMS [sic.] AS LICENSED LEGAL REPRESENTATIVES AS LICENSED BY THE STATE OF CALIFORNIA AND THE UNITED STATES BAR ASSOCIATIONS, ALL WITHOUT EXCEPTIONS ABANDONED DEBTORS AND HIS CASES AFTER RECEIVING RELETATIVELY [sic.] SUBSTANTIAL SUMS OF MONEY AND WANTED MORE WHEN THE CASES WERE IN PROGRESS. THE INSTANT CASE BEING DISMISSED HAS NOT BE GRANTED ADEQUATE TIME TO SECURE LAWYERS, & FACING ADVERSE DISMISSAL OR CONVERSION

*Id.*, ¶ 4. No declaration or other evidence in support of the *Ex Parte* Motion has been provided.

As the Chapter 13 Trustee, attorneys, and possibly the Debtor know, Congress provides for the dismissal of a Chapter 13 case at the request of the debtor in 11 U.S.C. § 1307(b), stating (emphasis added):

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, **the court shall dismiss a case under this chapter.** Any waiver of the right to dismiss under this subsection is unenforceable.

Congress further provides in 11 U.S.C. § 1307(e) that the court shall dismiss or convert a Chapter 13 case as follows:

(e) Upon the failure of the debtor to file a tax return under section 1308 [11 U.S.C. § 1308 requiring the filing of pre-petition tax returns], on request of a party in interest or the United States trustee and after notice and a hearing, **the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title,** whichever is in the best interest of the creditors and the estate.

Here, the court is presented with an interesting convergence of Bankruptcy Code provisions enacted by Congress.

In a related issue, the Supreme Court in *Marrama v. Citizens Bank*, 549 U.S. 365 (2007), ruled that though 11 U.S.C. § 706 appeared to grant a debtor the unlimited authority to convert a Chapter 7 case to one under Chapter 13 (using similar language to 11 U.S.C. § 1307(a)), the exercise of that right was subject to the power of the court to address misconduct and bad faith in the prosecution of the bankruptcy case.

In 2021, the Ninth Circuit Court of Appeals in *Nichols v. Marana Stockyard & Livestock Mkt. Inc. (In re Nichols)*, 10 F.4th (9th Cir. 2021), revisited its prior ruling that the principles of *Marrama* applied in full force and effect to the right of a debtor to dismiss a Chapter 13 case as provided in 11 U.S.C. § 1307(b). In light of the subsequent Supreme Court Decision in *Law v. Siegel*, 571 U.S. 415 (2014), the Ninth Circuit Panel stated:

On this point, section 1307(b)'s text is unambiguous. The statute provides, in relevant part: "On request of the debtor at any time . . . the court shall dismiss a case under this chapter." The term "shall" "normally creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35, 118 S. Ct. 956, 140 L. Ed. 2d 62 (1998); *see also Barbieri*, 199 F.3d at

619 ("The term 'shall,' as the Supreme Court has reminded us, generally is mandatory and leaves no room for the exercise of discretion by the trial court."). Section 1307(b)'s text plainly requires the bankruptcy court to dismiss the case upon the debtor's request. There is no textual indication that the bankruptcy court has any discretion whatsoever.

...

As we have already discussed, the Supreme Court's decision in *Law* clearly rejected such reasoning. And, ever since *Law* was decided, no other Circuit has taken the position that there is an implied equitable exception to § 1307(b)'s right to dismiss. *Cf. Smith v. U.S. Bank N.A.*, 999 F.3d 452, 456 (6th Cir. 2021) ("The command of 1307(b) is no mere procedural nicety, which is likely why no circuit court has accepted [the implied bad faith exception] argument since *Law* . . ."). Accordingly, for the same reason that we dispensed with *Rosson*, we must also reject the approach previously adopted by the Fifth and Eighth Circuits, and instead hew to the "absolute right" approach articulated by the Second Circuit in *Barbieri* and followed, most recently, by the Sixth Circuit in *Smith*.

...

We conclude that § 1307(b)'s text confers upon the debtor an absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception noted expressly in the statute itself. Consequently, the bankruptcy court here erred in denying the Nicholsons' motion to dismiss based solely on its finding of abuse of the bankruptcy process.

We are confident that the Bankruptcy Code provides ample alternative tools for bankruptcy courts to address debtor misconduct. Even if such tools were lacking, however, it would be up to Congress to remedy the omission by way of appropriate legislation. We must adhere to the statute's clear mandate, regardless of practical difficulties that may ensue.

In looking at 11 U.S.C. § 1307(b) and § 1307(e) Congress mandates that the court SHALL dismiss the case, but also SHALL convert or dismiss the case. The Chapter 13 Trustee has provided evidence that Debtor has not filed the prepetition tax returns as required by 11 U.S.C. § 1308.

It appears that it is left to the court to determine, based on the facts and circumstances which "SHALL" will be ordered by the court.

#### Alternative Remedies to Go With Debtor Dismissal Pursuant to 11 U.S.C. § 1307(b)

The Ninth Circuit's closing statement, "We are confident that the Bankruptcy Code provides ample alternative tools for bankruptcy courts to address debtor misconduct," is not merely a "soft landing" wrap up to saying that a prior decision of the Supreme Court does not apply any more. It is a direct reference to the bankruptcy court's corrective sanction power to address abuses of the federal judicial process and abuses of federal law. (This is without limitation on the District Court judges' power to withdraw the reference and to address such misconduct with their Article III punitive sanction power.)

In situations like this where there have been a series of non-productive filings of bankruptcy cases and debtors just appearing to seek the use of the automatic stay to maintain the status quo and fend off creditors, a common corrective sanction is to impose a bar on filing a further bankruptcy case for a period of time (say three years) or a bar on filing a further bankruptcy case for a period of time unless the chief bankruptcy judge for the District in which the case is to be filed authorizes that filing. In such an authorization scenario, the chief judge reviews the petition, schedules, statement of financial affairs, and Chapter 13 plan to be filed, and then has to make a determination that the debtor seeks to commence the case in good faith and to fulfill the debtor's obligations under the Bankruptcy Code. If so, then the case is filed. But if the documents do not so demonstrate, and it appears to be yet another non-productive filing, the chief judge does not authorize the filing. This is in the nature of a veracious litigant order.

### **February 22, 2023 Hearing**

At the hearing, **XXXXXXXXXX**

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

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

The Motion to Dismiss 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 **XXXXXXXX**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on January 17, 2023. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Convert 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). The defaults of the non-responding parties and other parties in interest are entered.

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

This Motion to Convert the Chapter 13 bankruptcy case of Nathaniel Sobayo ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor failed to make any plan payments.
- B. Debtor Failed to File Tax Returns.
- C. Debtor failed to provide the Trustee with documents.
- D. Debtor is a serial filer with 3 prior bankruptcy filings in the last eight years.
- E. Debtor has a significant amount of equity, favoring conversion.

## APPLICABLE LAW

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

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

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

## DISCUSSION

### Delinquency

Debtor is \$160.00 delinquent in plan payments, which represents one month of the \$160.00 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).

### Failure to File Tax Returns

The Internal Revenue Service has filed a Proof of Claim in which the Internal Revenue Service states that Debtor has not filed tax returns for 2019, 2020, and 2021. Filing of the returns 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).

### Failure to Provide Documents

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). Additionally Debtor has not provided the Trustee with a business questionnaire about his business and has not provided 6 months of bank account statements. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Serial Filer



Trustee raises the issue of Debtor's serial filing over the last 8 years; however, the Trustee does not assert that such demonstrates bad faith or filing of bankruptcy cases for an improper purpose. The court declines the assignment to develop any such arguments, to the extent they may exist, for the Trustee.

### **Significant Equity**

Trustee's records indicate there is \$12,767,215.00 in non-exempt equity. Additionally, Trustee has filed objections to exemptions which could increase the amount of non-exempt assets to \$14,844,974.00.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Convert 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

27. [22-22864-E-13](#)

**NATHANIEL SOBAYO**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-6-23 [136]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 7 and 8, 2023. The court computes that 14 and 15 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: \$78.00 due on February 1, 2023.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 7, 2023. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

This Motion to Convert the Chapter 13 bankruptcy case of Heather Ubaldo ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Failure to appear at § 341 Meeting of Creditors
- B. Delinquency
- C. Undisclosed Bankruptcy Filings Within Prior Eight Years

## APPLICABLE LAW

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

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

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

## DISCUSSION

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

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

### Delinquency

Debtor is \$984.00 delinquent in plan payments, which represents one month of the \$984.00 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).

### Undisclosed Bankruptcy Filings Within Prior Eight Years

Trustee reports that Debtor failed to disclose on the petition the following prior bankruptcy case:

- A. Case No. 15-20616
  - 1. Date Filed: January 28, 2015
  - 2. Chapter: 7
  - 3. Date Closed: May 22, 2015
  - 4. Reason for Close: Trustee completed administration of the estate.

## Equity

Trustee recommends conversion because there is \$61,239.90 in non-exempt equity. Trustee believes conversion is in the best interest of creditors or the estate.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

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

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

29. <a href="#">18-22885-E-13</a> <a href="#">DPC-2</a>	<b>RICHARD/LISA RAVALLI</b> <b>Lucas Garcia</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>12-7-22 [46]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is denied without prejudice.</b>
---

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

1. the debtor, Richard John Ravalli and Lisa Marie Ravalli (“Debtor”), is delinquent in Plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 21, 2022. Dckt. 50. Debtor states they will file a new plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,885.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for the Trustee reported that Debtor is now 8 months delinquent in payments.

Counsel for the Debtor recounted logistical challenges during the Christmas Holiday Season in communicating with Debtor, which included Debtor having to address some serious family matters. In light of the age of this case and the representation by Debtor’s counsel of diligently working with Debtor to get a modified plan in place for the last several months of this case, the Trustee proposed a continuance of this hearing. Debtor’s counsel concurred with the request for the continuance.

### **Trustee’s Status Report**

Trustee filed a status report on February 8, 2023. Dckt. 55. Trustee states Debtor is still delinquent in the amount of \$5,565.00 and requests this Motion be granted.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 14, 2023. Dckt. 57, 61. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 59. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

30. [22-22987](#)-E-13  
[DPC-2](#)

**ANTHONY TAMBASCO**  
**Richard Hall**

**MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 7  
12-29-22 [17]**

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

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Local Rule 9014-1(f)(1) Motion—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 29, 2023. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

The Motion to Convert 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 non-responding parties 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 Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

This Motion to Convert the Chapter 13 bankruptcy case of Anthony Tambasco (“Debtor”) has been filed by David Cusick (“Movant”), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor is delinquent in plan payments.
- B. Debtor failed to appear at the First Meeting of Creditors.

C. There is non-exempt equity to support conversion.

## **APPLICABLE LAW**

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

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

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

## **DISCUSSION**

### **Delinquent**

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

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

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

### **Nonexempt Equity**

Trustee states there is significant non-exempt equity in the amount of \$43,437.00. Debtor can only afford \$178.00 for monthly payments, and therefore, a Chapter 7 proceeding appears in the best interest of the estate.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.



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

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

The Motion to Convert 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

31. <a href="#">19-25889-E-13</a>	<b>KEVIN/KRISTY MACY</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-4</a>	<b>Peter Macaluso</b>	<b>1-23-23 <a href="#">[118]</a></b>

**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, persons who have filed a Request for Notice, and Office of the United States Trustee on January 23, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Kevin Jeffrey Macy and Kristy Ann Macy (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$190.00 of non-exempt equity.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 8, 2023. Dckt. 122. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,382.50 delinquent in plan payments, which represents multiple months of the \$1,525.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Sharilynn Ann Bonnard (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$1,176.00 of non-exempt equity.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on February 1, 2023. Dckt. 63. Debtor states that Debtor will file a Modified Chapter 13 Plan on or before the hearing date and requests that the Chapter 13 Trustee’s motion be denied.

## **DISCUSSION**

### **Delinquent**

Debtor is \$13,028.00 delinquent in plan payments, which represents multiple months of the \$4,132.00 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 new plan is not evidence that resolves this Motion.

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

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

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

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

33. [22-20494-E-13](#)      **MANUEL/RUTH CURIEL**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Eric Schwab**      **12-28-22 [36]**

**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, persons who have filed a Request for Notice, and Office of the United States Trustee on December 28, 2022. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Manuel Curiel and Ruth E. Curiel (“Debtor”), does not have a Plan Filed.
2. Debtor is Delinquent in Plan Payments.
3. Trustee recommends dismissal because this case was previously converted from a Chapter 7 to Chapter 13. Debtor has \$18,000.00 in non-exempt equity.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 8, 2023. Dckt. 40. Debtor states that Debtor will file an Amended Chapter Plan and a Motion to Confirm Their Chapter 13 Plan on or before the hearing date.

## **DISCUSSION**

### **No Plan**

Debtor did not file a Plan . A review of the docket shows that Debtor has not yet filed 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).

### **Possible Delinquency**

Debtor indicated to Trustee that they would be able to pay \$2,187.00 per month, starting August 25, 2022. Debtor has yet to commence payments. Therefore, even if Debtor were to have a pending plan, Debtor would be \$8,748.00 delinquent in plan payments, which represents multiple months of the \$2,187.00 plan payment. 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 plan is not evidence that resolves this Motion.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Ara Hovakimyan and Anahit Hovakimyan (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$3,524.66 of non-exempt equity.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on February 8, 2023. Dckt. 73. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,122.86 delinquent in plan payments, which represents multiple months of the \$2,351.98 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

# FINAL RULINGS

35. [19-22804-E-13](#)  
[DPC-2](#)

DAVID/KELLY RISSE  
Thomas Amberg

MOTION TO DISMISS CASE  
1-12-23 [\[39\]](#)

**Final Ruling:** No appearance at the February 22, 2023 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, 2023, 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 response filed by David Michael Risse and Kelly Ann Risse (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 47, 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 22, 2023 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 December 7, 2022. 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 dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

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

1. the debtor, Cherri Mae Da Roza (“Debtor”), is delinquent in Plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on December 19, 2022. Dckt. 148. Debtor states the delinquency will be cured prior to January 12, 2023, which is after the hearing date.

#### **DISCUSSION**

##### **Delinquent**

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

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

##### **Well Aged Bankruptcy Case**

Debtor commenced this Bankruptcy Case on May 14, 2017. Debtor's confirmed Third Modified Plan provides for a sixty-seven (67) month term. Plan, ¶ 2.03; Dckt. 117. Debtor's Plan provides for a 100% dividend for general unsecured claims. *Id.*, ¶ 3.14.

The Debtor is now in approximately month 66 of the Plan.

In light of the modest amount in default, the substantial investment of time and money by Debtor in prosecuting this case, and the representation that the cure will be after the January 4, 2023 scheduled hearing; and to avoid unnecessary expenditure of time and expense by Debtor and the Trustee, the court continues the hearing to the February 22, 2023 Chapter 13 Dismissal Calendar.

### **Trustee's *Ex Parte* Motion to Dismiss**

Trustee, having filed an Ex Parte Motion to Dismiss the pending Motion on January 30, 2023, Dckt. 153; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Debtor; the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick ("Trustee") having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 153, 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 22, 2023 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, Persons who have filed a Request for Notice and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Rosalinda Jessica Rivera (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$9,740.02 delinquent in plan payments, which represents multiple months of the \$975.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

38. [21-23405](#)-E-13  
[DPC](#)-2

**VICKI BURTON**  
**James Keenan**

**MOTION TO DISMISS CASE**  
**1-17-23 [25]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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.

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

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

1. the debtor, Vicki Lynn Burton (“Debtor”), is delinquent on plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,850.00 delinquent in plan payments, which represents multiple months of the \$1,650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 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 January 17, 2023. 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 denied without prejudice.**

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

1. the debtors, Scott Brian Williams and Yancey Bataclan Cuyugan (“Debtor”), have not filed an amended Plan.

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

Debtor filed an Amended Plan and Motion to Confirm on February 9, 2023. Dckts. 29, 31. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 34. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

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

40. [22-22405-E-13](#)  
[DPC-2](#)

**BARBARA MANNING**  
**Ashley Amerio**

**MOTION TO DISMISS CASE**  
**1-18-23 [28]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 14, 2023, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Barbara Manning (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 15, 2023, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Eric Owens (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 55, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 28, 2023. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Marc Chester Yu (“Debtor”), is delinquent on plan payments.
2. Debtor has failed to file an amended plan.

## DISCUSSION

### Delinquent

Debtor is \$59,600.00 delinquent in plan payments, which represents multiple months of the \$9,000.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## No Plan Pending

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 16, 2023. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

43.	<a href="#"><u>18-24411</u></a> -E-13	LINA VALLEJO MONTES	MOTION TO DISMISS CASE
	<a href="#"><u>DPC-2</u></a>	Julius Cherry	1-23-23 [ <a href="#"><u>39</u></a> ]

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

**Final Ruling: No appearance at the February 22, 2023 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who filed a Request for Notice on January 17, 2023. 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 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, 2023, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Eric Owens (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 55, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

45. <a href="#">22-20913</a> -E-13 <a href="#">DPC-2</a>	<b>ZACHARIAH DORSETT</b> George Burke	<b>MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 12-22-22 [32]</b>
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**This matter has been removed from the calendar, it having been and the case having been converted to one under Chapter 7 at the February 7, 2023 hearing. Order, Dckt. 56.**

46. <a href="#">19-20516</a> -E-13 <a href="#">DPC-1</a>	<b>TRUMAN/LINDA KING</b> Mark Shmorgon	<b>MOTION TO DISMISS CASE 1-12-23 [33]</b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2023, 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 response filed by Name of Debtor ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 41, 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.

47. <a href="#">22-21817</a> -E-13 <a href="#">DPC-2</a>	<b>GARY SPARKS</b> <b>Mary Ellen Terranella</b>	<b>MOTION TO DISMISS CASE</b> <b>1-30-23 [26]</b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Chapter 13 Trustee, David Cusick ("Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

48. <a href="#">22-22917</a> -E-13	<b>JOHN DOUGHERTY</b> <b>Mary Ellen Terranella</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-29-22 [36]</b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditor, creditors, and Chapter 13 Trustee as stated on the Certificate of Service on December 30 and 31, 2022. The court computes that 53 and 54 days' notice has been provided.

The court issued an Order to Show Cause based on creditor Cheryl Henry's failure to pay the required fees in this case: \$188.00 due on December 15, 2022.

<b>The Order to Show Cause is discharged.</b>
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The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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

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

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

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

49. [21-22220-E-13](#)  
[DPC-2](#)

**KENNETH FALJEAN**  
**Gabriel Liberman**

**MOTION TO DISMISS CASE**  
**1-25-23 [83]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Kenneth Faljean (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,122.00 delinquent in plan payments, which represents multiple months of the \$4,452.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 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, Office of the United States Trustee, and persons who have filed a Request for Notice on January 23, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtors, Darrell Kevin Rhym and Chuenta Lenis Rhym (“Debtor”), are delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$6,656.00 delinquent in plan payments, which represents multiple months of the \$1,666.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

**Final Ruling:** No appearance at the February 22, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. The debtor, Steven Wolf (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$15,720.00 delinquent in plan payments, which represents multiple months of the \$2,625.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

52. [18-27024-E-13](#)      **PEDRO/GAUDENCIA AMBALONG**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Ronald Holland**      **1-12-23 [38]**

**Final Ruling: No appearance at the February 22, 2023 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 12, 2023. 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).

<p><b>The hearing on the Motion to Dismiss is continued to February 28, 2023 at 2:00 p.m. in Courtroom 33.</b></p>
--

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

1. The deceased debtors, Pedro B. Ambalong and Gaudencia L. Ambalong (“Deceased Debtor”), is delinquent in plan payments.

## DECEASED DEBTOR'S COUNSEL'S REPLY

Deceased Debtor's Counsel filed a Reply on February 2, 2023. Dckt. 43. Deceased Debtor's Counsel states both debtors are deceased. *Id.* In addition, Counsel contends that the estate of the Deceased Debtor was entitled to a discharge prior to the completion of plan payments. *Id.* Counsel states that they will forthwith file the appropriate notices of death, motion to appoint Jodi Ambalong as the representative of the bankruptcy estate, and a Motion for Discharge. *Id.* Counsel requests that the case not be dismissed pending the motion for discharge. *Id.*

## DISCUSSION

### Delinquent

Debtor is \$8,380.34 delinquent in plan payments, which represents multiple months of the \$2,281.12 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).

### Hearing on Motion to Substitute

The court notes there is a hearing on the Motion to Substitute for deceased debtor set for February 28, 2023. Motion to Substitute, Dckt. 45. The court continues the hearing on this Motion to be heard in conjunction with the Motion to Substitute.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to February 28, 2023 at 2:00 p.m. in Courtroom 33.

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Cathryn E. Kingsbury (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$5,880.00 delinquent in plan payments, which represents multiple months of the \$1,960.00 plan payment. Before the hearing, another payment will come due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

54. <a href="#">22-21725</a> -E-13 <a href="#">DPC-1</a>	LISA ZAPIEN-ASTRAN Mikalah Liviakis	MOTION TO DISMISS CASE 1-25-23 <a href="#">[25]</a>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Lisa Zapien-Astran (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,625.00 delinquent in plan payments, which represents multiple months of the \$525.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. The debtor, Elicia Blanco-Andrade (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,250.00 delinquent in plan payments, which represents multiple months of the \$675.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

56. [22-22930](#)-E-13

**DAWN GONZALES**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-30-22 [\[13\]](#)**

**CASE DISMISSED: 12/2/22**

**Final Ruling:** No appearance at the February 22, 2023 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 December 1 and 2, 2022. The court computes that 82 and 83 days’ notice has been provided.

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

<b>The Order to Show Cause is discharged as moot.</b>
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The court having dismissed this bankruptcy case by prior order filed on December 2, 2022 (Dckt. 14), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 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, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtor, Greg Karamatic (“Debtor”), is delinquent on plan payments.

## DISCUSSION

### Delinquent

Debtor is \$6,205.00 delinquent in plan payments, which represents multiple months of the \$985.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

58. [21-22333](#)-E-13  
[DPC-1](#)

**VIVIAN RAY**  
**Grace Johnson**

**MOTION TO DISMISS CASE**  
**1-17-23 [19]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2023, Dckt. 24; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Vivian Loretta Ray (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 24, 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.

59. [22-22040-E-13](#)  
[DPC-1](#)

**BOUPHA BOUNGNASIRI**  
**Seth Hanson**

**MOTION TO DISMISS CASE**  
**1-23-23 [18]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 23, 2023. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Bouphe Boungnasiri (“Debtor”), has failed to commence plan payments.
2. Trustee recommends dismissal based on the \$3,027.00 of non-exempt equity.

## **DISCUSSION**

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

Debtor did not commence making plan payments and is \$18,800.00 delinquent in plan payments, which represents multiple months of the \$4,700.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

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

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

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

60. [19-22941-E-13](#)  
[DPC-6](#)

**MONICA MARIA**  
**Grace Johnson**

**MOTION TO DISMISS CASE**  
**1-17-23 [120]**

**Final Ruling:** No appearance at the February 22, 2023 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, 2023, Dckt. 125; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Monica Lynn Maria (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 125, 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.

61. <a href="#"><u>19-27643-E-13</u></a>	<b>DARIUS HUDSON</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#"><u>DPC-1</u></a>	<b>Julius Cherry</b>	<b>1-23-23 [28]</b>

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 23, 2023. 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.

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

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

1. the debtor, Darius Cornelius Hudson (“Debtor”), is delinquent in Plan Payments.

2. Trustee recommends dismissal based on the \$0.00 of non-exempt equity.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,115.00 delinquent in plan payments, which represents multiple months of the \$1,025.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Luis David Velazquez and Cheryl Ann Velazquez (“Debtor”), is delinquent in Plan Payments.
2. Trustee recommends dismissal based Debtor’s plan proposes to pay no less than 17.5% to unsecured claims estimated at \$40,084.00. Debtor has \$8,426.50 of non-exempt equity.

## DISCUSSION

### Delinquent

Debtor is \$1,936.00 delinquent in plan payments, which represents multiple months of the \$450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).



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

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

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

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

63. [22-22848](#)-E-13

**JEFFREY/NIKEA HARRISON**  
**Thomas Amberg**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**1-6-23 [29]**

63 thru 64

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 7 and 8, 2023. The court computes that 45 and 46 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: \$78.00 due on January 3, 2023.

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

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

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

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

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

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

64. [22-22848](#)-E-13

**JEFFREY/NIKEA HARRISON**  
**Thomas Amberg**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**2-6-23 [41]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 7 and 8, 2023. The court computes that 14 and 15 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: \$78.00 due on January 31, 2023.

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 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, persons who have filed a Request for Notice, and Office of the United States Trustee on January 12, 2023. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. the debtor, Richard Lynn Howard and Johnna Faye Howard (“Debtor”), is delinquent in Plan Payments.
2. Trustee recommends dismissal based on the \$1.21 of non-exempt equity

## DISCUSSION

### Delinquent

Debtor is \$4,122.00 delinquent in plan payments, which represents multiple months of the \$1,645.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

66. [19-21951](#)-E-13  
[DPC](#)-6

JASMINE SMITH  
Scott Shumaker

**CONTINUED MOTION TO DISMISS  
CASE  
12-7-22 [[133](#)]**

**Final Ruling: No appearance at the February 22, 2023 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2022. 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 dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

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

1. the debtor, Jasmine Rae Smith (“Debtor”), is delinquent in Plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on December 20, 2022. Dckt. 137. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,977.00 delinquent in plan payments, which represents multiple months of the \$394.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Trustee filed a Status Report on February 8, 2023 indicating Debtor is still delinquent, but only in the amount of \$2.00. Dckt. 142. Trustee requests the court deny Trustee's Motion to Dismiss.

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

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

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

**IT IS ORDERED** that the 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 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 12, 2023. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

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

1. the debtor, Patrick Christopher Dickens and Crystal Lynn Dickens (“Debtor”), is delinquent in Plan Payments.
2. Debtor does not have a Plan pending.
3. Trustee recommends dismissal based on the \$18,337.00 of non-exempt equity which Trustee does not believe warrants conversion.

## DISCUSSION

### Delinquent

Debtor is \$9,991.68 delinquent in plan payments, which represents more than one month of the \$5,122.92 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Plan Pending**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 20, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Shawn Lawrence Stevens and Christina Renee Stevens (“Debtor”), is delinquent in Plan Payments.
2. Trustee recommends dismissal based on the \$0.00 of non-exempt equity.

## DISCUSSION

### Delinquent

Debtor is \$13,560.00 delinquent in plan payments, which represents multiple months of the \$2,260.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).



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

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

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

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

69. <a href="#">19-22954-E-13</a>	<b>DAVID/NICOLE WILLS</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-3</a>	<b>David Foyil</b>	<b>1-12-23 <a href="#">[70]</a></b>

**Final Ruling:** No appearance at the February 22, 2023 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, 2023, Dckt. 79; 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 David Thomas Wills and Nicole Marie Wills (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 79, 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.

70. [19-24159-E-13](#)  
[DPC-1](#)

**JESSIE WEBB**  
**Bruce Dwiggin**

**MOTION TO DISMISS CASE**  
**1-25-23 [22]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Jessie Frank Webb (“Debtor”), is delinquent in Plan Payments
2. Trustee recommends dismissal based on the \$0.00 of non-exempt equity.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,450.00 delinquent in plan payments, which represents multiple months of the \$3,675.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on December 21, 2022. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Rizzalina Ravanera Todd (“Debtor”), is delinquent in plan payments

## DISCUSSION

### Delinquent

Debtor is \$2,760.00 delinquent in plan payments, which represents multiple months of the \$690.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

72. [22-22669-E-13](#)  
[DPC-1](#)

**RAVINDER SINGH**  
**David Johnston**

**MOTION TO DISMISS CASE**  
**12-12-22 [30]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on December 12, 2023. By the court’s calculation, 72 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Ravinder Singh (“Debtor”), is delinquent on plan payments.
2. Debtor failed to appear at the first meeting of creditors. Trustee’s Docket Entry from January 19, 2023 indicates Debtor did not appear at the continued meeting of creditors.
3. Debtor failed to properly serve the plan.
4. Debtor failed to provide pay advices.
5. Debtor failed to file documents related to the business.

## **DISCUSSION**

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

Debtor did not commence making plan payments and is \$1,830.00 delinquent in plan payments, which represents one month of the \$1,830.00 plan payment. Before the hearing, two more plan payments will be due. 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.

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

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

### **Never Noticed Initial Plan**

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

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

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

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

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

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,

- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

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

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Ronald Abercrombie and Sabrina Abercrombie (“Debtor”), are delinquent on plan payments

## DISCUSSION

### Delinquent

Debtor is \$11,110.00 delinquent in plan payments, which represents multiple months of the \$1,985.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

74. <a href="#">19-25473</a> -E-13 <a href="#">DPC-1</a>	<b>LORING HAMMER</b> Nikki Farris	<b>MOTION TO DISMISS CASE</b> 1-17-23 <a href="#">[34]</a>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Persons who have filed a Request for Notice and Office of the United States Trustee on January 17, 2023. 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.

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

1. the debtors, Loring Hammer (Debtor”), is delinquent on plan payments

## DISCUSSION

### Delinquent

Debtor is \$4,299.16 delinquent in plan payments, which represents multiple months of the \$1,141.03 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

75. <a href="#">22-22973</a> -E-13 75 thru 76	<b>PATRICIA SHERRON</b> <b>Pro Se</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-21-22 [20]</b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 22 and 23, 2022. The court computes that 61 and 62 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on December 16, 2022.

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

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

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

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

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

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

76. <a href="#">22-22973-E-13</a>	<b>PATRICIA SHERRON</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	<b>Pro Se</b>	<b>1-23-23 [31]</b>

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 23, 2023. 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.

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

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

1. the debtors, Patricia Sharron (Debtor”), is delinquent on plan payments.
2. Debtor failed to provide Pay Advances.
3. Debtor failed to provide Tax Returns.
4. Debtor is a serial filer.
5. Chapter 13 Schedules are inaccurate.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,156.00 delinquent in plan payments, which represents one month of the \$2,156.00 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).

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

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

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

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

### **Serial Filing**

Trustee raises the issue of Debtor’s serial filing over the last year; however, but the Trustee does not assert that such demonstrate bad faith or filing of bankruptcy cases for an improper purpose. The court declines the assignment to develop any such arguments, to the extent they may exist, for the Trustee.

### **Inaccurate Chapter 13 Schedule**

Debtor has not accurately filed Chapter 13 Schedules. Schedule C lists deposits money for \$13.00, \$1.00, and \$1.00. These are not amounts that may be exempted on Schedule C. On Schedule E/F debtor failed to identify creditor Capitol One, N.A. Capitol One, N.A. has filed a Proof of Claim in the amount of \$487.21. Capitol One, N.A. is also missing from the Master Address List. Schedule J is

missing a page making is difficult to assess debtors expenses. Official Form 122C inaccurately states the median family income for a household of three.

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

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

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

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

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

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

77. [18-22174-E-13](#)  
[DPC-1](#)

LONNI JONES  
Michael Hays

**MOTION TO DISMISS CASE**  
**1-24-23 [28]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

<b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2023, Dckt. 36; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy

Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Lonni Jones (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 36, 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 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. The debtors, Joseph Espana and Martha Espana (“Debtor”), are delinquent in plan payments.

#### **CREDITOR’S SUPPORT DOCUMENT**

Creditor holding a secured claim, JP Morgan Chase Bank, N.A., filed a statement in support of Chapter 13 Trustee’s Motion to Dismiss. Dckt. 160. Creditor states Debtor is in default under the Chapter 13 Plan on their claim.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$27,773.87 delinquent in plan payments, which represents multiple months of the \$7,081.40 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

79. [22-23077](#)-E-13

**NOHEMI BARRON**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-27-22 [\[22\]](#)**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 28 and 29, 2022. The court computes that 55 and 56 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$32.00 due on December 29, 2022.

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



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

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

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

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

80. [21-21279-E-13](#)  
[DPC-2](#)

SUSAN STRAUB  
Mary Ellen Terranella

**MOTION TO DISMISS CASE**  
**1-17-23 [83]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee, and persons who have filed a Request for Notice on January 17, 2023. 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.

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

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

1. The debtor, Susan Straub (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$16,334.35 delinquent in plan payments, which represents multiple months of the \$3,386.87 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

81. [18-25581](#)-E-13  
[DPC-10](#)

**DANIELLE DELGADO**  
**Mary Ellen Terranella**

**MOTION TO DISMISS CASE**  
**1-23-23 [155]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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**The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2023, Dckt. 163; 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 Danielle Nicole Delgado (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 163, 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.

82. [20-21181](#)-E-13  
[DPC-3](#)

TANYA HALL  
Timothy Walsh

**MOTION TO DISMISS CASE**  
**1-17-23 [\[92\]](#)**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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.

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

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

1. The debtor, Tanya Hall (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,054.51 delinquent in plan payments, which represents multiple months of the \$3,237.78 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee, on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Jonathan Wieneke (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S NON-OPPOSITION**

Debtor filed a Non-Opposition on January 26, 2023. Dckt. 72. Debtor states that they do not oppose the Motion and that they do not intend to appear at the February 22 hearing. *Id.*

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$25,246.16 delinquent in plan payments, which represents multiple months of the \$4,348.50 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

84. [18-26082-E-13](#)  
[DPC-1](#)

**ERIC MAYORGA**  
**Mikalah Liviakis**

**MOTION TO DISMISS CASE**  
**1-12-23 [22]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Office of the United States Trustee and persons who have filed a Request for Notice on January 12, 2022. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is denied without prejudice.</b>
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The Chapter 13 Trustee, David Cusick, (“Trustee”), seeks dismissal of the case on the basis that:

1. The debtor, Eric Mayorga (“Debtor”), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on February 7, 2023. Dckt. 33. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 31. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013

(stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

85. <a href="#">22-22082</a> -E-13	<b>ARTURO/SUSANA GARCIA</b> <b>Thomas Amberg</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-27-22 <a href="#">[23]</a></b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 28 and 29, 2022. The court computes that 55 and 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$76.00 due on December 20, 2022.

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

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

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

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

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

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

86. [20-23888-E-13](#)  
[DPC-1](#)

**CLINTON BAIER**  
**Michael Benavides**

**MOTION TO DISMISS CASE**  
**1-17-23 [47]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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.

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

1. The debtor, Clinton Baier (“Debtor”), is delinquent in plan payments.



## DISCUSSION

### Delinquent

Debtor is \$2,338.00 delinquent in plan payments, which represents multiple months of the \$495.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

87. <a href="#">18-20489</a> -E-13 <a href="#">DPC</a> -6	<b>DAVID/STACY SWEENEY</b> August Bullock	<b>MOTION TO DISMISS CASE</b> 1-23-23 [ <a href="#">121</a> ]
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 13, 2023, Dckt. 129; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Eastman Sweeney and Stacy Dawn Ader-Sweeney (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

88. <a href="#">21-20890-E-13</a> <a href="#">DPC-2</a>	<b>HAYDEN/MANDY COIT</b> <b>Mikalah Liviakis</b>	<b>MOTION TO DISMISS CASE</b> <b>1-25-23 [74]</b>
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**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 25, 2023. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Hayden Scott Coit and Mandy Erin Coit (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$21,186.00 of non-exempt equity with priority claims of \$41,160.00.

## **DISCUSSION**

### **Delinquent**

Debtor is \$16,984.99 delinquent in plan payments, which represents multiple months of the \$7,200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1. the debtor, Kenneth Lee Smithour (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$375.25 of non-exempt equity.

## DISCUSSION

### Delinquent

Debtor is \$48,537.03 delinquent in plan payments, which represents multiple months of the \$7,375.68 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 court shall issue an order substantially in the following form holding that:

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

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

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

90. <a href="#">22-21991-E-13</a>	<b>JEFFREY/JOAN MARTIN</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	Steven Shumway	1-23-23 <a href="#">[22]</a>

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 23, 2023. 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.

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

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

1. the debtor, Jeffrey Brian Martin and Joan Marie Martin (“Debtor”), does not have a Plan Pending.
2. Debtor has failed to provide Tax Returns.

3. Trustee recommends dismissal because the non-exempt equity is \$169,880.00 compared to the Internal Revenue Service's claims: a Secured Claim of \$386,083.22 and an Unsecured Priority Claim of \$49,551.29.

## **DISCUSSION**

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 21, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Cause exists to dismiss this case.

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

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

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

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

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 24, 2023. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Robert Lee Hales (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$1,630.00 of non-exempt equity.

## DISCUSSION

### Delinquent

Debtor is \$4,295.00 delinquent in plan payments, which represents multiple months of the \$1,595.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

92.	<a href="#"><u>21-23898-E-13</u></a>	<b>ANGELLO/DONNA AUSTIN</b>	<b>MOTION TO DISMISS CASE</b>
	<a href="#"><u>DPC-2</u></a>	<b>Michael Hays</b>	<b>1-25-23 <a href="#"><u>[51]</u></a></b>

**Final Ruling:** No appearance at the February 22, 2023 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, 2023, 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 response filed by Angello Edwards Austin and Donna M Austin (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 57, 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.

93. [20-22499-E-13](#) **EDGAR/DULIAMARIA AGUILAR** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Paul Bains** **1-17-23 [35]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 17, 2023. 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><b>The Motion to Dismiss is denied without prejudice.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Edgar Eduardo Aguilar and Duliamaria Aguilar ("Debtor"), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$0.00 of non-exempt equity.

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

Debtor filed a Modified Plan and Motion to Confirm on February 8, 2023. Dckt. 45, 39. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 42. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

94. [20-23299-E-13](#)  
[DPC-2](#)

**RENE MAXON**  
**Julius Cherry**

**MOTION TO DISMISS CASE**  
**1-17-23 [27]**

**Final Ruling:** No appearance at the February 22, 2023 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, persons who have filed a Request for Notice, and Office of the United States Trustee on January 17, 2023. 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.

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

1. the debtor, Rene Sylvia Maxon (“Debtor”), is delinquent in Plan payments.
2. Trustee recommends dismissal based on the \$0.00 of non-exempt equity.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,819.24 delinquent in plan payments, which represents multiple months of the \$2,345.19 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 court shall issue an order substantially in the following form holding that:

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

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

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