

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

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

**March 9, 2022 at 9:00 a.m.**

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1.     [17-26035](#)-E-13     **RUSSELL/PATRICIA CARLSEN**     **MOTION TO DISMISS CASE**  
          [DPC-6](#)                 **Seth Hanson**                     **2-7-22 [83]**

**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 February 7, 2022. 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>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1.         the debtor, Russell Thornton Carlsen and Patricia Jean Carlsen ("Debtor"), is delinquent in plan payments.

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 17, 2022. Dckt. 87. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

Debtor is \$10,761.58 delinquent in plan payments, which represents multiple months of the \$3,903.10 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Evidence For Factual Assertion**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 7, 2022. 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).

<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, Shari Ann Lambert ("Debtor"), is delinquent in plan payments.

The amount of the delinquency is stated to be \$6,108.77, with an additional payment of \$2,163.32 coming due before the hearing on this Motion.

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

Debtor filed a Response on February 23, 2022. Dckt. 74. Debtor states they will file a modified plan and supporting documents prior to the hearing on the Motion to Dismiss.

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

Debtor filed a Modified Plan and Motion to Confirm on March 1, 2022. Dckt. 78. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 79. 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.

**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 February 7, 2022. 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).

<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, Roberta Kay White ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Response on February 25, 2022. Dckt. 49. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$2,240.00 delinquent in plan payments, which represents multiple months of the \$1,120.00 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 Evidence For Factual Assertion**

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.

4. [19-20311-E-13](#)      **HARJIT JANDA/ RAKHWANT SINGH**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Michael Hays**                      **2-7-22 [47]**

**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 February 7, 2022. 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>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Harjit Singh Janda and Rakhwant Kuar Singh (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on February 22, 2022. Dckt. 51. Debtor states the delinquency will be cured prior to the hearing date. Debtor further states they believe the Trustee may have lost or misapplied their payments to another account.

## **DISCUSSION**

### **Delinquent**

Debtor is \$634.00 delinquent in plan payments, which represents multiple months of the \$317.00 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 Evidence For Factual Assertion**

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 9, 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).

<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, Justin Leif Erickson and Elisabeth Grace Erickson ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 24, 2022. Dckt. 50. Debtor states they will file a modified plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,700.00 delinquent in plan payments, which represents multiple months of the \$1,675.00 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).

### **Modified Plan and Motion to Confirm not Filed**

Unfortunately as of the court's review of this file, no modified plan and motion to confirm were filed. Debtor's 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.

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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 February 7, 2022. 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).

<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, Garret Deleon Ambrosio and Elaine Marie Gabagat-Ambrosio (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 22, 2022. Dckt. 50. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$430.00 delinquent in plan payments, which represents one month of the \$430.00 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 Evidence For Factual Assertion**

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.

7.     19-22531-E-13     **PATRICIA NELSON**     **MOTION TO DISMISS CASE**  
          DPC-3                 **Scott Johnson**                 **2-7-22 [86]**

**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 February 7, 2022. 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)..

<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, Patricia Margaret Nelson (“Debtor”), is delinquent on plan payments.

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on February 15, 2022. Dckt. 94 and 90, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 92. 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.

8.	<a href="#"><u>19-22933-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>MATTHEW RUBB</b> <b>Steele Lanphier</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>12-22-21 [82]</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 22, 2021. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXXXXXXXXXXXX</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, Matthew Kent Rubb (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

Debtor is \$7,200.00 delinquent in plan payments, which represents multiple months of the \$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).

Counsel for Debtor appeared at the hearing and provided an explanation on the record of the “ball being dropped” and several challenges in connection with this case. The Trustee concurred in the request to continue the hearing to allow Debtor and counsel to proceed with the diligent prosecution of this case.

## **Status of Case**

Neither party has filed a status report or updated pleading regarding the status of the bankruptcy case. Additionally, Debtor has not filed a new Modified Plan since their previous Motion to Confirm Modified Plan was denied on January 27, 2022.

At the hearing, **XXXXXXXXXXXX**

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 **XXXXXXXXXXXXXX**.

**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 22, 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 -----

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

1. the debtor, Elena Perez Gonzalez ("Debtor"), is delinquent in plan payments.
2. The Debtor has failed to file an amended plan and set it for confirmation.

### **Debtor's Opposition**

Debtor filed an opposition stating they request the Trustee's Motion to be continued April 5, 2022, to be heard in conjunction with Debtor's Objection to US Bank's Claim (Docket Control No. PGM-2). Debtor states until this matter is resolved a new plan cannot be confirmed.

In the Opposition Debtor does not address how this objection to claim relates to the monetary delinquency under the Plan now filed with the court, for which was denied due to Debtor being

delinquent in plan payments and not having provided her Social Security number. Civil Minutes, Dckt. 42.

In the Opposition Debtor does not address the now \$6,810.00 delinquency (including the February 2022 plan payment) and where that almost \$7,000.00 in plan payments have gone.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,540.00 delinquent in plan payments, which represents multiple months of the \$2,270.00 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.

### **Failure to Make Any Plan Payments**

Debtor commenced this case on November 8, 2021. Petition, Dckt. 1. On Schedule I, Debtor states having \$4,282.00 in monthly income. Dckt. 14 at 20-21. On Schedule J Debtor states having (\$2,012.00) in monthly expenses, which results in Debtor having \$2,270.00 in monthly net income (which does not include \$971.00 of \$1,070.00 of Social Security Benefits) – which shows that Debtor has \$2,270.00 in projected monthly income. *Id.* at 22-23.

Debtor's Plan requires the monthly plan payment of \$2,270.00 to be made to the Trustee. Plan, ¶ 2.01; Dckt. 16.

As the Trustee and supporting Declaration show, Debtor has not made any plan payments to the Trustee. The Motion to Dismiss was filed February 22, 2022. Thus, as of the filing of this Motion, plan payments of \$2,270.00 each had come due for December 2021 and January 2022 – which total the \$4,282.00 delinquency. Now, the February 25, 2022 payment has come due and Debtor offers no evidence of that payment or the prior payments having been made.

In substance, Debtor has diverted or pocketed \$6,552.00 of projected monthly income, paying nothing to the Chapter 13 Trustee, while reaping the benefits of being ensconced in the protective automatic stay cocoon of the Bankruptcy Code.

This is not Debtor's first or even second Chapter 13 bankruptcy case. A summary of Debtor's recent bankruptcy endeavors is:

			<b><u>Current Pending Chapter 13 Case 21-23833</u></b> Representation: Peter Macaluso, Esq.
		Filed <b>November 8, 2021</b>	
<b><u>Chapter 13 Case 19-24237</u></b> Representation: Peter Macaluso, Esq.	Dismissed <b>August 12, 2021</b>		
The bankruptcy case was dismissed due to Debtor's failure to prosecute confirmation of a Chapter 13 Plan. 19-24237; Order, Dckt. 147.			
	Filed <b>July 3, 2019</b>		
		Dismissed <b>June 24, 2019</b>	<b><u>Chapter 13 Case 19-22169</u></b> Representation: <i>Pro Se</i>
		The bankruptcy case was dismissed due to Debtor defaulting, failing to address shortcomings with the case, and failing to prosecute their Motion to Vacate. 19-22169; Civil Minutes, Dckt. 43.	
		Filed <b>April 8, 2019</b>	
<b><u>Chapter 13 Case 18-27543</u></b> Representation: <i>Pro Se</i>	Dismissed <b>March 25, 2019</b>		
The bankruptcy case was dismissed due to Debtor's default in plan payments and not prosecuting confirmation of a Chapter 13 plan. 18-27534; Civil Minutes, Dckt. 41.			
	Filed <b>December 3, 2018</b>		



The Plan filed in this case, in which Debtor committed to may monthly plan payments of \$2,270.00, provides for the following distributions:

- A. Class 1 Secured Claims - arrearage payment of \$825.00 and currently payment of \$851.68. Plan, ¶ 3.07; Dckt. 16.
- B. Class 2 Secured Claims - None. *Id.* ¶ 3.08.
- C. Class 4 Secured Claims to be paid directly by Debtor - None. *Id.* ¶ 3.10. (The Internal Revenue Service has filed Proof of Claim 1-1 asserting a claim of \$15,036.65, of which \$12,769.61 is claimed as a Class 5 priority unsecured claim.)
- D. Class 5 Priority Claims - \$7,340.60 total. *Id.* ¶ 3.12.
- E. Class 7 General Unsecured Claims - \$11,489.32 total. *Id.* ¶ 3.14.

Debtor has elected to not make the promised plan payments so the Trustee can make the disbursements on undisputed portions of the one secured claim that is in default and the priority claim, while holding portions of the monthly plan payment that would relate to disputed portions of the secured claim.

In the Objection to the Secured Claim (Dckt. 46) Debtor asserts that she has not been given proper credit on that claim for other security creditor has received from the sale of another property that cross collateralized the claim. In the Objection Debtor does not state what the correct amount of the claim should be and the prayer for relief only requests that the court issue what is effective a mandatory injunction for there to be a recalculation of the creditor's claim – not to disallow any specific dollar amount of what is claimed.

The hearing on the Objection to Claim is set for April 5, 2022. Notice, Dckt. 47. Service of the Objection was made to Fay Servicing, LLC and U.S. Bank, N.A. on February 9, 2022. Cert. of Serv.; Dckt. 49. Federal Rule of Bankruptcy Procedure 3007(a)(2)(A) provides that an objection to claim shall be served on the creditor by First Class on the person to be served with notices on the Proof of Claim. However, Federal Rule of Bankruptcy Procedure 3007(2)(A)(ii) further provides:

(ii) if the objection is to a claim of an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act, in the manner provided in Rule 7004(h).

Federal Rule of Bankruptcy Procedure 7004(h) provides (emphasis added):

(h) Service of process on **an insured depository institution**. Service on an insured depository institution (as defined in section 3 of the **Federal Deposit Insurance Act**) in a **contested matter** or adversary proceeding shall be made by **certified mail addressed to an officer of the institution** unless—

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtor is commencing a new contested matter, in which U.S. Bank, N.A. has not appeared. The Certificate of Service does not document service having been made by certified mail or directed to an officer at the Bank's main office address of 425 Walnut Street, Cincinnati, OH 45202 <sup>Fn.1.</sup>

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FN. 1. FDIC Bank Finder;

[https://plus.lexis.com/search/?pdmfid=1530671&crd=4b51bdc4-ce6a-4f0a-9e3b-67cc6b5548c3&pdsearchterms=frbp+7004&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=&pdpsf=&pdqtype=and&pdquerytemplateid=&ecomp=bg\\_tk&earg=pdsf&prid=d27e5754-7172-4061-8124-1d209d098568](https://plus.lexis.com/search/?pdmfid=1530671&crd=4b51bdc4-ce6a-4f0a-9e3b-67cc6b5548c3&pdsearchterms=frbp+7004&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=&pdpsf=&pdqtype=and&pdquerytemplateid=&ecomp=bg_tk&earg=pdsf&prid=d27e5754-7172-4061-8124-1d209d098568)  
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It may be that prosecution of the Objection may be delayed due to insufficient service.

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 27, 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).

Cause has been established by the Chapter 13 Trustee for the dismissal of this case. Debtor has worked her way through a series of Chapter 13 cases for almost four years without completing a plan. Now, in the present case Debtor is obtaining the "preliminary injunction effect" of the automatic stay without carrying out her part of the bargain – funding a Chapter 13 Plan.

While Debtor may dispute the amount of the secured claim, Debtor offers no explanation for failing to make the monthly plan payment.

The Motion is granted and the Bankruptcy 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 Bankruptcy Case is Dismissed.

10. [21-23439-E-13](#) **JOLIE/MICHAEL BARKALOW** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Seth Hanson** **2-14-22 [26]**

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

**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 14, 2022. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

**The hearing on the Motion to Dismiss is continued to **xxxxxxx**.**

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

1. Both debtors, Jolie Ann Barkalow and Michael A. Barkalow ("Debtors") are deceased. Debtors Attorney filed a Notice of Death (Dckt. 23) and Certificates of Death (Dckt. 24).
2. Debtors are delinquent in plan payments.

#### **Attorney's Notice of Death**

Debtors' Attorney filed a Notice of Death of Debtor for each Debtor. Debtors' Attorney

indicates:

no one from the family has responded to counsel's efforts to communicate with the decedents' family in order to determine whether or not they intend to pursue a motion for substitution as the successor or representative to the deceased.

Dckts. 23, 30.

### **Review of File for This Bankruptcy Case**

The proposed Amended Chapter 13 Plan (Dckt. 20) in this case provided for a Class 1 cure of the claim secured by Debtor's Residence. Plan ¶ 3.07; Dckt. 20. Several other secured claims were provided for, priority taxes, and for general unsecured claims a 0.00% dividend.

On Schedule J, Debtor lists having three minor children. Dckt. 1 at 35.

On Schedule A/B Debtor lists the residence property as having a value of \$576,900. *Id.* at 12. Reference is also made to a term life policy. *Id.* at 16. Those appear to be the significant assets of value.

On Schedule D Debtor lists there being two secured claims secured by the Residence, which are stated to total (\$300,000). *Id.* at 22. That is consistent with the secured claims filed by the two creditors. POC 3-1 and POC 8-1.

The two death certificates filed indicate an extraordinarily sad and traumatic cause of the almost simultaneous death of the two debtors and the three minor children losing their parents. An internet search (which is not reference as "evidence") discloses that the extended family is acting to address the needs of the minor children.

From what has been presented, it is not clear whether probate or other proceedings concerning the late debtors or for the care of the children (and their interests in the assets of their late parents) have been commenced. It does appear that a Dana Percival, a family member is organizing fund raising events.

On its face, it there would appear to be around \$205,000 equity in the Residence after payment of the secured claims. This is an asset that could go to the late Debtor's children. Zillow.com (against not referenced as evidence) gives a value of \$604,400 for the Residence, and states that there is an auction of the property pending. It states that the auction is set for April 19, 2022.

In reviewing the file, the court has not granted relief from the stay for such an auction to be conducted. A real property foreclosure search indicates that the Notice of Foreclosure was recorded on September 22, 2021, which was nine days before the September 30, 2022 filing of the Bankruptcy Case.

In light of the substantial assets in this case, before it will be dismissed the court will need a personal representative of the successor to Debtor or one appointed for the late debtors' children to properly adjudicate this Motion.

Through the internet the Trustee and US Trustee can identify family members. They can do a

search of the County court files to identify if there are probate, conservatorship, or other proceedings. They can contact Child Protective Services and other County agencies which exist to protect the welfare of minors to see if someone from that office would be appointed to protect a several hundred thousand dollar assets for the late debtors' children. It may be that the sale of the Residence would be conducted in this bankruptcy case, after which the case could be dismissed.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,300.00 delinquent in plan payments, which represents multiple months of the \$3,100.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Death of Debtors**

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

However, this is a bankruptcy estate with substantial assets and no identifiable person to whom they will be abandoned upon dismissal. The court continues the hearing pending the appointment of a successor representative for the late debtors and has a representative for the three minor children so that their rights and interests are properly addressed.

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 **XXXXXXX**, **XXXXXXX**, 2022, to afford counsel for Debtor, the Chapter 13 Trustee, and the US Trustee to investigate what probate and conservatorship proceedings may be pending, whether there is an administrator appointed for the estate of the late debtors, whether there is a conservatorship or other proceeding for the three minor children of the late debtors, and if not, to contact proper County agencies to provide this court and the Trustee with a proper representative so that this Bankruptcy Case dismiss and the Chapter 13 Trustee can identify to whom all of the assets of the Bankruptcy Estate will be abandoned.

**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 February 7, 2022. 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).

<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, Brian Stephens ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 23, 2022. Dckt. 39. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,158.70 delinquent in plan payments, which represents multiple months of the \$1,819.98 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).

### **No Evidence For Factual Assertion**

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

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

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

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

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

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

12. [21-21944-E-13](#)      **DAVID TAYLOR**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Peter Macaluso**      **2-9-22 [38]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 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).

<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, David Raleigh Taylor (“Debtor”), is delinquent in plan payments.

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 22, 2022. Dckt. 42. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,690.00 delinquent in plan payments, which represents multiple months of the \$845.00 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 Evidence For Factual Assertion**

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

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

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

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

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

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



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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 7, 2022. 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).

<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, Matthew Blair Thompson ("Debtor"), is delinquent in plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on February 25, 2022. Dckt. 110. Debtor states the delinquency will be cured prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$5,749.26 delinquent in plan payments, which represents multiple months of the \$2,032.02 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### If No Evidence For Factual Assertion

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

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

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,

**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.

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, 2022. 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 Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

- March 9, 2022 at 9:00 a.m.**  
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Debtor filed a Response on February 23, 2022. Dckt. 249. Debtor states the delinquency will be cured or a modified plan will be filed prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,890.00 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).

### **No Evidence For Factual Assertion**

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.

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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 February 7, 2022. 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).

<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, Rhonda DeJesus ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Response on February 22, 2022. Dckt. 113. Debtor states they will file a modified Chapter 13 plan prior to the scheduled hearing.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$8,618.94 delinquent in plan payments, which represents multiple months of the \$2,206.18 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

##### **No Evidence For Factual Assertion**

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.

16.	<a href="#"><u>18-26458-E-13</u></a> <a href="#"><u>DPC-3</u></a>	<b>KAREN LEITHEISER AND CRAIG GREEN Michael Hays</b>	<b>MOTION TO DISMISS CASE 2-8-22 [63]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. 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 debtor, Karen Kaye Leitheiser and Craig Tod Green (“Debtor”), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 22, 2022. Dckt. 67. Debtor states that they are unable to cure the delinquency prior to the hearing date and requests a conditional order that the case not be dismissed if the delinquency is cured prior to March 18, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,018.00 delinquent in plan payments, which represents multiple months of the \$509.00 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 Evidence For Factual Assertion**

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 February 14, 2022. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

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

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

1. the debtor, Manuel S. Gonzalez and Regina R. Saucedo ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

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

Debtor did not commence making plan payments and is \$5,275.84 delinquent in plan

payments, which represents one month of the \$5,275.84 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.

Debtor has set the hearing on the Motion to Confirm the Chapter 13 Plan for March 15, 2022. The court continues the hearing to that date to consider the dismissal of the case in light of whether Debtor is able to confirm the Plan.

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 hearing on the Motion to Dismiss is continued to **2:00 p.m. on March 15, 2022**; to be conducted in conjunction with the Debtor's Motion to Confirm the Chapter 13 Plan.



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

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

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

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

**The Motion to Dismiss is xxxxxxx.**

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

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

## **DEBTOR'S OPPOSITION**

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

## **DISCUSSION**

### **Delinquent**

Debtor is \$600.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Overextended**

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

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

The Trustee reports that the delinquency has been reduced to \$500, and that there is a claim objection pending which would resolve the delinquency. The Trustee requested that the hearing be continued.

### **Claim of Solano DCSS**

According to Debtor in their Opposition to Motion to Dismiss, the overextended term will be rectified by Debtor's filing of an objection to a claim. Dckt. 145. At the prior hearing on this matter, Trustee also reported there is a claim objection pending which would resolve the delinquency. Civil Minutes, Dckt. 155. Debtor objected to the claim filed by Solano DCSS (Claim 11) in the priority amount of \$14,545.51. Objection, Dckt. 146 and see Trustee's Non-Opposition, Dckt. 157. Debtor's objection was based on the grounds that the claim was not timely filed. Dckt. 146. Trustee did not oppose Debtor's objection. Dckt. 157. On February 16, 2022, the court issued an order sustaining Debtor's objection and disallowing the claim at issue in its entirety. Dckt. 160.

Since Trustee reported that the resolution of claim would cure Debtor's delinquency, and the court has sustained Debtor's objection for that claim, it would appear that Trustee's concerns have been cured. At the hearing, **XXXXXXXXXX**

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

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

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

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

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

**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 22, 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 -----

<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, Kirk Byron Lossius ("Debtor"), has not made any Plan payments to Trustee and is delinquent in Plan payments.

## DISCUSSION

### Failed to Commence Plan Payments

Debtor did not commence making plan payments and is \$7,029.92 delinquent in plan payments, which represents one month of the \$7,029.92 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.

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.

20.	<a href="#"><u>17-23874-E-13</u></a> <a href="#"><u>DPC-3</u></a>	LAURA HILTON Matthew DeCaminada	CONTINUED MOTION TO DISMISS CASE 1-12-22 <a href="#"><u>[52]</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 12, 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).

<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, Laura Hope Hilton (“Debtor”), is delinquent \$1,153.00 in Plan payments. Debtor’s monthly payment is \$305.00, prior to the hearing another payment of \$305.00 will come due. As a result Debtor will need to pay \$1,458.00, in order to bring this Plan current by the date

of the hearing.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 25, 2022. Dckt. 56. Debtor states she will file a modified Plan to cure the delinquency.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,153.00 delinquent in plan payments, which represents multiple months of the \$305.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

In light of the age of this case and it being in the last several months, the Trustee agreed to a continuance to allow Debtor and counsel to diligently prosecute a modification of the Plan or otherwise cure the defaults.

### **No New Filings**

The court notes that Debtor has not filed a modified Chapter 13 Plan as they stated in their Opposition to Trustee's Motion to Dismiss (Dckt. 56) and in their Declaration in Support of Opposition (Dckt. 57). Debtor has not made any filings to the court since the previous hearing on this matter.

Cause has been show for the dismissal of this Bankruptcy 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.

**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 February 8, 2022. 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).

<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, Mackare Jones ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 20, 2022. Dckt. 48. Debtor states they have made two payments of \$548.00.00 to cure the delinquent amount as stated in Trustee's Motion to Dismiss. Declaration of Debtor, Dckt. 49. Debtor additionally states they intend to make the February 25, 2022 payment, which had not been due at the time of filing. *Id.*

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,096.00 delinquent in plan payments, which represents multiple months of the \$548.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

is dismissed.

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

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

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

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

22.    [19-25877-E-13](#)        **SHANITA JEFFERSON**                            **MOTION TO DISMISS CASE**  
         [DPC-4](#)                **Thomas Amberg**                                **2-8-22 [126]**

**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 February 8, 2022. 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).

<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, Shanita Lorain Jefferson (“Debtor”), is delinquent in Plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 20, 2022. Dckt. 130. Counsel for Debtor states they are working to contact Debtor to see if a plan modification is feasible or whether it is possible to cure the delinquency. Counsel for Debtor requests Trustee's motion to dismiss to be heard, and Counsel additionally states that they will supplement the record after they successfully contact Debtor.

## **DISCUSSION**

### **Delinquent**

Debtor is \$800.00 delinquent in plan payments, which represents multiple months of the \$400.00 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.



**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 as stated on the Certificate of Notice on February 9, 2022, and was served on the Chapter 13 Trustee as stated on the Certificate of Notice on February 8, 2022. The court computes that 28 and 29 days' notice has been provided, respectively.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$83.00 due on February 1, 2022.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$68.00.

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

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

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

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

**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 February 8, 2022. 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).

<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 John Ravalli and Lisa Marie Ravalli ("Debtor"), is delinquent in Plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 23, 2022. Dckt. 23. Debtor states the vehicle that was being paid for in their Chapter 13 Plan suffered major mechanical engine issues and repair will cost more than the total value of the vehicle. Debtor states that surrendering the vehicle is the most efficient and economical way to handle the situation. Debtor additionally states that they anticipate needing to file a modified Plan to resolve their delinquency.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,600.00 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 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.

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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 February 8, 2022. 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).

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

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

1. the debtor, Mark Timothy Galisatus and Jennifer Ellen Galisatus (“Debtor”), is delinquent in Plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 23, 2022. Dckt. 146. Debtor states there are discrepancies between the amount Trustee states Debtor owes and the amount that Debtor believes they owe. Debtor believes the current delinquent amount should be \$5,100.00 as opposed to Trustee’s assertion that Delinquent is \$13,304.00 delinquent in Plan payments.

Debtor explains that the \$5,100.00 figure comes from Debtor’s payments of \$3,252.00 for the months July, August, and September 2021. Those payments were each \$1,700.00 less than what was required under the Second Amended Plan (\$4,951.00) as confirmed by this court on October 18, 2021. See Order, Dckt. 141. Debtor also asserts that the total due to Trustee is \$203,062.00 as opposed to Trustee’s statement that the total due is \$206,314.00. Further, Debtor states that Debtor’s last payment was made to the Trustee on February 1, 2022. Dckt. 146 at 2:12. However, the payment chart detailed in Trustee’s Motion to Dismiss indicates that the last payment Trustee received from Debtor was on December 28, 2021. Dckt. 142.

Furthermore, there appears to be another discrepancy in connection with the court’s July 28, 2021 order and the court’s October 18, 2021 order. According to Debtor, the July 28, 2021 order stated

that Debtor's Plan would be for a 65-month term (see Dckt. 110) whereas the October 18, 2021 order states that Debtor's Plan would be for a 66-month term (see Dckt. 141).

Upon review of the order submitted by the Chapter 13 Trustee, the total length of the Plan is sixty-six months. Dckt. 141. Additionally, after review of the Trustee's Objection to the Motion to Modify (Dckt. 103) and the Civil Minutes from the hearing on the Motion to Modify (Dckt. 108) the total length of the Modified Plan is sixty-six (66) months. The court's conditional order amending to provide for a sixty-five (65) month term of the Plan entered on January 28, 2021 contained a typographical error. The proper length is sixty-six (66) months as detailed in the Order Modifying Plan entered on October 18, 2021. Dckt. 141.

At the hearing, ~~XXXXXXXXXX~~

## DISCUSSION

### Delinquent

Debtor is \$~~xxxx.xx~~ delinquent in plan payments, which represents ~~xxxx~~ months of the \$4,952.00 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.~~

**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 February 8, 2022. 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).

<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, Yvonne Johnson (“Debtor”), is delinquent in Plan Payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 21, 2022. Dckt. 123. Debtor states that she “has paid in excess of \$68,000.00 and has sent another \$5,000.00 [on February 21, 2022].” In Debtor’s Declaration in Support of Opposition, Debtor explains that she became delinquent in her payments due to a loss of clients resulting from COVID-19. Dckt. 124 at ¶ 4. Debtor additionally asserts that she should have enough funds to become current in her Plan payments by the date of the hearing for this matter. *Id.* at ¶ 6.

What Debtor’s Opposition does not say is that Debtor has cured all defaults. In her Declaration, Debtors states that it is her “intention” to “catch up” on her Plan payments by March 9, 2022, the day before the hearing on this Motion to Dismiss.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,554.28 delinquent in plan payments, which represents multiple months of the \$2,962.76 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).

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.

# FINAL RULINGS

27. [18-25600-E-13](#)      KEVIN OWENS/ SONYA      MOTION TO DISMISS CASE  
[DPC-2](#)      WHITE      2-7-22 [37]  
Mohammad Mokarram

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 7, 2022. 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 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 March 2, 2022, Dckt. 45; 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 reply filed by Kevin Lemar Owens and Sonya Yvette White (“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. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



28. [19-26003](#)-E-13 MAY/HAI TRUONG MOTION TO DISMISS CASE  
[DPC](#)-1 Peter Cianchetta 2-9-22 [[18](#)]

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29. [19-24205-E-13](#) MARGO SCOTT MOTION TO DISMISS CASE  
[DPC-3](#) Candace Brooks 2-9-22 [\[37\]](#)

.....

**March 9, 2022 at 9:00 a.m.**  
**Page 49 of 81**

to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the 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 March 9, 2022 hearing is required.

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

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Tiffany Allen’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on February 16, 2022, however, converting the case to a proceeding under Chapter 7. Dckt. 53. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on February 16, 2022. *McFadden*, 37 B.R. at 521.

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 as moot, this case having been converted to one under Chapter 7.

31.    [19-27017](#)-E-13      **ANDREA BAKER**      **MOTION TO DISMISS CASE**  
         [DPC](#)-4                **Michael Hays**                **2-9-22 [69]**

**DEBTOR DISMISSED: 2/23/2022**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 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). 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 Astran and Lisa Yvette Zapien-Astran (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,960.00 delinquent in plan payments, which represents multiple months of the \$1,980.00 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.

33. [20-20219-E-13](#) **JAMES/STEPHANIE THOMPSON** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Jeffrey Ogilvie** **2-9-22 [21]**

**Final Ruling:** No appearance at the March 9, 2022 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 February 9, 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”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 2, 2022, Dckt. 27; 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 reply filed by James Vincent Thompson and Stephanie Lee Thompson (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

The court shall issue 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. 27, 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.

34.    [19-27920](#)-E-13      **MICHAEL MULLINS**      **MOTION TO DISMISS CASE**  
         [DPC-1](#)                      **Peter Macaluso**                      **2-9-22 [46]**

**Final Ruling: No appearance at the March 09, 2022 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 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 court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The hearing on the Motion to Dismiss is continued to 2:00 p.m. on March 22, 2022, to be conducted in conjunction with the hearing on the Debtor’s Motion to Confirm the Modified Chapter 13 Plan.**

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

1.        the debtor, Michael Roy Mullins (“Debtor”), is delinquent on plan payments.

## FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 9, 2022. Dckt. 53 and 50, respectively. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 54. 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. <sup>FN.1.</sup>

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FN. 1. The court notes that Debtor's counsel, as he and his staff have done in other unrelated cases, continues to file supplemental Schedules I and J as dual amended schedules and supplemental schedules, checking both the amended box and the supplemental box on the Schedule. In doing so, the Debtor is stating under penalty of perjury and the attorney is filing with the Fed. R. Bankr. P. 9011 certification that the information is true and correct that the income and expense information relate all the way back to December 26, 2019 filing of this case.

Given this repeated conduct by counsel and this specific conduct by Debtor, it may well be that the court concludes that Debtor is not prosecuting this case in good faith and is intentionally misstating financial information to his advantage. After the court having repeatedly addressed this inaccurate making of statements under penalty of perjury with Debtor's counsel in prior unrelated bankruptcy cases, the filing of such statement under penalty of perjury by Debtor could not be mere "clerical error."

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Debtor's good faith in the prosecution of this case appearing in question, the court continues the hearing.

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 2:00 p.m. on March 22, 2022, to be conducted in conjunction with the hearing on the Debtor's Motion to Confirm the Modified Chapter 13 Plan.



**Final Ruling: No appearance at the March 9, 2022 hearing is required.**

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

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

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

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

1. the debtor, Laura Marie Bateman (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,750.00 delinquent in plan payments, which represents multiple months of the \$875.00 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.

36. [19-21928-E-13](#) **ELICIA BLANCO-ANDRADE** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mohammad Mokarram** **2-7-22 [17]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 7, 2022. 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).

<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 March 2, 2022, 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 reply filed by Elicia Mercedes Blanco-Andrade (“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.

37.     [21-21639-E-13](#)     **LORRIE BLEVINS**     **MOTION TO DISMISS CASE**  
          [DPC-1](#)           **Mikalah Liviakis**       **2-9-22 [23]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 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). 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, Lorrie Lane Blevins (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,370.00 delinquent in plan payments, which represents multiple months of the \$790.00 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. [19-25240-E-13](#) **ROY/MERALDINE MAULINO** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Seth Hanson** **2-9-22 [30]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 9, 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). 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, Roy Nocum Maulino and Meraldine Delacruz Maulino ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,054.08 delinquent in plan payments, which represents multiple months of the \$6,018.01 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 March 9, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 7, 2022, Dckt. 117; 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. 117, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

40. [20-25442](#)-E-13      **MARLON/MICHELLE**      **CONTINUED MOTION TO DISMISS**  
[DPC-3](#)      **VALENZUELA**      **CASE**  
Steele Lanphier      **1-10-22 [86]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Status Report on Trustee’s Motion to Dismiss requesting the Motion to Dismiss be dismissed, 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.**

41. [18-24147](#)-E-13      **JUDY SYPNIESKI**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mary Ellen Terranella**      **2-7-22 [48]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on February 7, 2022, Dckt. 48; 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 Judy Marie Sypnieski (“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. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

42.	<a href="#"><u>21-20752</u></a> -E-13 <a href="#"><u>DPC-2</u></a>	DOUGLAS/VALERIE LUTES Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 12-8-21 <a href="#"><u>[81]</u></a>
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

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

- ## DEBTOR'S OPPOSITION

## DISCUSSION

Debtor is \$45,586.24 delinquent in plan payments, which represents multiple months of the \$4,696.24 plan payment. Before the hearing, another plan payment will be due. Failure to make plan



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

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

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

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

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

In light of some issues concerning the proposed Plan, the Trustee requested the hearing be continued.

### **Status of Case**

Neither the Trustee nor the Debtor have filed any pleadings related to the current Motion since the January 5, 2022 hearing.

The hearing on the Debtor's Motion to Modify Chapter 13 Plan After Confirmation filed on December 31, 2021, Dckt. 88, is scheduled for March 22, 2022. Dckt. 104.

The Trustee filed an Opposition to Debtor(s) Motion to Modify Chapter 13 Plan After Confirmation Filed on December 31, 2021. Dckt. 100. In the Opposition the Trustee informs the court that Debtor has failed to file updated Schedules I and J which prohibits the court from adequately assessing the feasibility of the Debtor's plan.

The Motion to Dismiss shall be continued to be heard in conjunction with the Motion to Modify the Plan.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to March 22, 2022 at 2:00 pm to be heard in conjunction with Debtor's Motion to Confirm Modified Plan.

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 29, 2022. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on January 24, 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.

**Final Ruling: No appearance at the March 9, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. 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).

<p><b>The Motion to Dismiss is granted, and the Bankruptcy 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, Elmer Noe Crespin and Alma Yared Crespin (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 23, 2022. Dckt. 364. Debtor states the delinquency will be cured on or prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,370.98 delinquent in plan payments, which represents multiple months of the \$2,752.63 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.

45. [18-23464-E-13](#) **CYNTHIA PAYSINGER** **MOTION TO DISMISS CASE**  
[DPC-6](#) **Peter Macaluso** **2-8-22 [182]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. 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.

<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, Cynthia J. Paysinger (“Debtor”), is delinquent in Plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$6,440.00 delinquent in plan payments, which represents multiple months of the \$2,500.00 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 March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Umash Vinay Prasad and Sunita Prasad (“Debtor”), is delinquent in Plan payments.

#### **DEBTOR’S NON-OPPOSITION**

Debtor filed a non-opposition on February 23, 2022. Dckt. 78. Debtor explicitly state they do not oppose Trustee’s motion to dismiss the Chapter 13 Bankruptcy case.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$7,003.56 delinquent in plan payments, which represents multiple months of the \$2,875.76 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.

47.     [20-24768-E-13](#)     **MILLER LE**     **MOTION TO DISMISS CASE**  
         [DPC-3](#)             **Mikalah Liviakis**             **2-8-22 [47]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. 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.

<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, Miller Hongphong Le (“Debtor”), is delinquent in Plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,990.00 delinquent in plan payments, which represents multiple months of the \$1,290.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

48.	<a href="#"><u>18-25079-E-13</u></a>	<b>SHONTELL BEASLEY</b>	<b>MOTION TO DISMISS CASE</b>
	<a href="#"><u>DPC-4</u></a>	<b>Peter Macaluso</b>	<b>2-8-22 [157]</b>

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 7, 2022, Dckt. 170; 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 Shontell Beasley (“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. 170, 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.

49.	<a href="#"><u>17-22982-E-13</u></a> <a href="#"><u>DPC-10</u></a>	<b>SANDRA AVILA</b> <b>Michael Hays</b>	<b>MOTION TO DISMISS CASE</b> <b>2-8-22 [117]</b>
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**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 7, 2022, Dckt. 123; 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 Sandra Lyne Avila (“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. 123, 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.

50.	<a href="#"><u>20-25390-E-13</u></a> <a href="#"><u>DPC-2</u></a>	ANA BERMUDEZ Paul Bains	MOTION TO DISMISS CASE 2-8-22 <a href="#"><u>[46]</u></a>
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**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Ana Isabel Bermudez (“Debtor”), is delinquent in Plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on February 17, 2022. Dckt. 50. Debtor explicitly states that they do not oppose Trustee's Motion to Dismiss Debtor's Chapter 13 Bankruptcy Case.

## **DISCUSSION**

### **Delinquent**

Debtor is \$934.00 delinquent in plan payments, which represents multiple months of the \$467.00 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 March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 7, 2022. 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, Maria Fatima Delgado Ibasan (“Debtor”), is delinquent in Plan payments.
2. Debtor is in material default pursuant to § 6.04 of the Plan.

## DISCUSSION

### Delinquent

Debtor is \$3,864.74 delinquent in plan payments, which represents one month of the \$3,864.74 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### Exceeding Sixty Months

Debtor is in material default under the Plan because, according to Trustee's calculations, the Plan will complete in 82 months as opposed to 60 months pursuant to the confirmed Plan. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d). This is due to Debtor estimating priority claims at \$0.00, when priority claims actually totaled \$28,357.25. Section 6.04 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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 March 9, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Michael Edward Oosterman and Kimberly Leona Oosterman (“Debtor”), is delinquent in Plan payments.

## DISCUSSION

### Delinquent

Debtor is \$13,194.71 delinquent in plan payments, which represents multiple months of the \$6,186.82 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

53. [20-25296-E-13](#) **LESSLIE/MARANDA SPARKS** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Randall Ensminger** **2-8-22 [65]**

**Final Ruling:** No appearance at the March 9, 2022 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 8, 2022. 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.

<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, Lesslie Dean Sparks and Maranda Dawn Sparks (“Debtor”),

is delinquent in Plan payments.

## DISCUSSION

### Delinquent

Debtor is \$7,609.72 delinquent in plan payments, which represents multiple months of the \$2,675.00 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.

54.	<a href="#"><u>17-26999-E-13</u></a> <a href="#"><u>DPC-2</u></a>	RADOSLAV DONKOV AND SVETLANA DONKOVA Daniel Ritzinger	MOTION TO DISMISS CASE 2-8-22 <a href="#"><u>[78]</u></a>
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**Final Ruling:** No appearance at the March 9, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having an *Ex Parte* Motion to Dismiss the pending Motion on March 2, 2022, Dckt. 84; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the declaration filed by Radoslav V. Donkov and Svetlana Y. Donkova (“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. 84, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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