

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**March 20, 2019 at 10:00 a.m.**

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1.	<a href="#"><u>19-21042-B-13</u></a> <a href="#"><u>LBG-2</u></a>	<b>MICHAEL/BERNADETTE AMBERS Lucas B. Garcia</b>	<b>MOTION TO EXTEND AUTOMATIC STAY O.S.T. 3-15-19 <a href="#"><u>[23]</u></a></b>
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**Tentative Ruling**

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

**The court's decision is to grant the motion to extend automatic stay on an interim basis through and including 11:59 p.m. on April 22, 2019, unless extended by further order of the court.**

**Final hearing on the Motion will be conducted at 1:00 p.m. on April 19, 2019.**

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months and sixth bankruptcy case overall. The Debtors' prior bankruptcy case was dismissed voluntarily by the Debtors on July 21, 2018, due to an unexpected change in their financial situation (case no. 16-26860, dkt. 48). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

**Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may

**March 20, 2019 at 10:00 a.m.**

be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that the previous and present cases were filed to preserve their home. In the previous bankruptcy, Debtors were unable to fulfill their obligations under chapter 13 because they had financially helped their son with his wedding expenses and the unanticipated costs associated with his unexpected spinal injury soon after his wedding. The Debtors were unable to catch up on plan payments and the prior plan became unfeasible. The Debtors state that their son is not expected to need their further assistance and that they wish to proceed in this bankruptcy to preserve their home.

The Debtors have sufficiently rebutted, by clear and convincing evidence for purpose of this expedited hearing, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. <sup>FN. 1</sup>

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FN. 1. In the Declaration in support of the Motion Debtor's testify that there were two main causes of the failure of the prior bankruptcy case:

5. We further state that the dismissal of the prior case was NOT due to the willful inadvertence or negligence on our part. Our son had a severe spine injury right after being married [sic] and we had both financially helped with the wedding and then found ourselves needed to help with the injury and recovery. He is not expected to need our further assistance at present and we wish to proceed in preserving our home and fulfilling our obligations in Chapter 13.

Declaration ¶ 5, Dckt. 25. Clearly, a serious medical injury intervening in the financial plans of a debtor is an extraordinary event. However, Debtors also explain that funding their son's wedding also caused the dismissal.

In the Chapter 13 Plan in the prior case, it does not appear that funding a wedding was included in Debtor's expenses. 16-26860; Schedule J, Dckt. 1 at 31-32. Additionally, in the Order confirming the Plan in the prior case, express requirements for the turn over of monies received by Debtor Elizabeth Ambers from a trust distribution to the Chapter 13 Trustee. *Id.*; Order, Dckt. 41. The Chapter 13 Plan in the prior case required \$4,900.00 a month payments. *Id.*, Dckt. 5. The Chapter 13 Trustee's Final Report states that Debtor paid \$68,600.00 into the Plan. *Id.*, Dckt. 54. With \$4,900 a month payments, this would represent fourteen (14) months payments. The case was filed in October 2016, the payments commenced in November 2016, and fourteen months would run through December 2017. It does not appear that trust distribution payments were made to the Chapter 13 Trustee in the prior case.

A review of Schedule A/B does not list any trust beneficiary interests. Dckt. 1 at 13-19, *see*

Question 25 expressly stating that the Debtor have “no” interests in any trusts.

The Statement of Financial Affairs does not disclose any transfers to other persons within the two years prior to the commencement of this case.. Presumably, paying medical expenses or other expenses of an ill son would be such transfers. *Id.* at 36-37.

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The court notes that Debtor’s prior case was assigned to the Hon. Ronald Sargis. The court notes that the general policy in the District is that when a debtor has to file multiple cases, then the case should be assigned to the judge who heard the prior case to avoid the appearance of judge or trustee shopping.

The judge to whom this case is assigned should consider whether the case should be transferred to the Judge, and trustee, who was assigned the prior bankruptcy case 16-26860 (the only prior case in which there appears to have been a confirmed plan).

Because this is being presented on only several days notice, the court grants the motion and extends the stay on an interim basis through and including 11:59 p.m. on April 15, 2019, with the final hearing to be conducted at 1:30 p.m on April 9, 2019.

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 Extend the Automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) filed by Michael and Bernadette Ambers, the Chapter 13 Debtors, having been presented to the court on five calendar days after service by mail (Cert. of Serv., Dckt. 26, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted on an interim basis, with the stay being extended for all purposes and parties pursuant to 11 U.S.C. § 362(c)(3)(B) through and including 11:59 p.m. on April 22, 2019, unless extended or terminated by further order of the court.

**IT IS FURTHER ORDERED** that the final hearing on the Motion will be conducted at 1:30 p.m. on April 19, 2019, before the Hon. Christopher D. Jaime, Courtroom 32.

Notice of the Final Hearing shall be served on or before March 22, 2019, and Oppositions, if any, filed and served on or before April 8, 2019.

Additionally, the judge to whom the case is assigned may consider

transferring this case to the Hon. Ronald H. Sargis, the judge to whom the prior case in which there was a confirmed plan.

2.     [19-20008-E-13](#)     **DEMETRA MOORE**     **ORDER TO SHOW CAUSE - FAILURE**  
                                  **Pro Se**                                   **TO PAY FEES**  
  **2-6-19 [21]**

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor (*Pro Se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 8, 2019. 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: \$79.00 due on February 1, 2019.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
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The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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

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

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

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

3.     [19-20008-E-13](#)     **DEMETRA MOORE**     **MOTION TO DISMISS CASE**  
                                  **DPC-3**                                   **Pro Se**                                   **2-13-19 [27]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 13, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the Debtor, Demetra Ann Moore ("Debtor"), failed to appear at the First Meeting of Creditors on February 7, 2019. The Meeting has been continued to March 14, 2019 at 1:00pm.

Trustee also notes Debtor's case was filed on January 2, 2019 and the first plan payment of \$400.00 will be due on February 25, 2019.

## **DISCUSSION**

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

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

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

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

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

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

4. [18-22713-E-13](#)      **DAMION HRIBIK**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Gary Fraley**                      **2-11-19 [67]**

**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 11, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

<p><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 Damion Alexander Hribik ("Debtor") is \$2,620.85 delinquent in plan payments.

#### **DEBTOR'S REPLY**

Debtor filed a Reply on March 5, 2019. Dckt. 71. Debtor states that he acquired a spiral fracture of his left leg. Debtor represents he is working to become current by the hearing date.

#### **DISCUSSION**

Debtor is \$2,620.85 delinquent in plan payments, which represents one month of the \$2,620.85 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 a minute order substantially in the following form holding that:

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

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

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

5.

[14-27630-E-13](#)  
[DPC-3](#)

**ROSIE GOMEZ**  
**Gary Fraley**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**1-14-19 [94]**

**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 14, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

<p><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 Rosie Lares Gomez ("Debtor") is \$3,597.90 delinquent in plan payments.

#### **DEBTOR'S REPLY**

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

#### **FEBRUARY 20, 2019 HEARING**

At the February 20, 2019 hearing, the Trustee reported that a payment had been received on January 28, 2019 for \$3,000, but a delinquency still remains. Given the age of the case, and the Trustee concurring, the court continued the hearing to March 20, 2019 at 10:00am. Dckt. 100.

#### **DISCUSSION**

Nothing has been filed since the last hearing.

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



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

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

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

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

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

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

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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 5, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jeffrey Young ("Debtor") is \$2,250.00 delinquent in plan payments.

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

Debtor filed a Response on March 6, 2019. Dckt. 36. Debtor states that he is working with his attorney to file and set for confirmation hearing a modified plan.

#### **DISCUSSION**

Debtor is \$2,250.00 delinquent in plan payments, which represents multiple months of the \$900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 a minute order substantially in the following form holding that:

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

hearing.

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

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

7.     18-25141-E-13     **BLAKE HARBIN**     **MOTION TO DISMISS CASE**  
          DPC-2           **Chad Johnson**       **2-5-19 [55]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2019. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

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

<p><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 Blake Harbin (“Debtor”) is \$4,250.00 delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on March 4, 2019. Dckt. 59. Debtor states he is working to file and

set for confirmation hearing a modified plan.

## **DISCUSSION**

Debtor is \$\$4,250.00 delinquent in plan payments, which represents one month of the \$4,250.00 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 a minute order substantially in the following form holding that:

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

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

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

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

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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 (*pro se*) and Office of the United States Trustee on February 4, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, Elena Perez Gonzalez ("Debtor"), is \$1,165.00 delinquent in plan payments.
2. The Debtor failed to notice all interested parties of the Chapter 13 Plan and set a confirmation hearing to date. The Debtor filed their plan on December 17, 2018, Dckt. 19. This was after the Trustee issued the 341 notice on December 17, 2018, Dckt. 18.

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

Debtor filed a Response on February 28, 2019. Dckt. 35. Debtor states that the payment was delayed due to uninsured theft, which Debtor represents is something that will not occur again. Debtor states further the delinquency will be cured by the hearing date.

Debtor further notes that an Amended Schedule C has been filed.

#### **DISCUSSION**

Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore,

Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor is \$1,165.00 delinquent in plan payments, which represents one month of the \$1,165.00 plan payment. While Debtor states the payment was delayed due to an uninsured theft, no detail is provided as to what was stolen and why this precluded the plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon 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 5, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, James Howard Smith ("Debtor"), is delinquent \$960.00 in plan payments.

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

Debtor filed an Opposition February 12, 2019. Dckt. 81. Debtor states he will cure the delinquency before the date of the hearing.

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

Debtor filed an Amended Opposition March 11, 2019. Dckt. 87. Debtor notes he is represented by new counsel, Stutz Law Office, P.C.

Debtor states further due to costs associated with his vehicle he will have to modify his plan.

#### **DISCUSSION**

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

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





delinquent \$4,256.00 in plan payments.

2. Debtor has not filed and set for confirmation hearing a new amended plan since the Trustee's Objection To Confirmation of the prior plan was sustained on January 15, 2019.

## **DEBTOR'S REPLY**

Debtor filed a Reply March 6, 2019. Dckt. 36. Debtor represents that the defaults payments will become cured and an amended plan filed before the date of the hearing.

## **DISCUSSION**

Debtor is \$4,256.00 delinquent in plan payments, which represents one month of the \$2,128.00 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).

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 15, 2019. Order, Dckt. 23. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

11. [18-27157](#)-E-13      LATOYA KAMILAH SMITH      CONTINUED MOTION TO DISMISS  
[DPC-2](#)      George Burke      CASE  
1-23-19 [\[25\]](#)

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

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

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

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

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

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

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

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

#### **FEBRUARY 20, 2019 HEARING**

At the February 20, 2019 hearing the court, based on Debtor's request and it appearing Debtor was actively prosecuting the case continued the hearing on the Motion to March 20, 2019 at 10:00 a.m. to allow Debtor to file an amended plan.

#### **RULING**

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

A review of the docket shows Debtor has not filed an amended plan.

At the hearing, xxxxxxxxxxxxxx.

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

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

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

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

12. [19-20060](#)-E-13      **RANDY KEMP**  
   **Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-19 [\[14\]](#)**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 13, 2019. The court computes that 35 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on February 6, 2019.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
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The court’s docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

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

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

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

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

13. 19-20060-E-13      **RANDY KEMP**  
DPC-3                      **Pro Se**

**MOTION TO DISMISS CASE**  
**2-13-19 [23]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 13, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Randy Kemp (“Debtor”), did not provide 521 documents, including 60 days of employer pay advices and a tax return for the most recent prepetition filing year.
2. Debtor appeared at the Meeting of Creditors February 7, 2019 but did not provide proof of a social security number to verify his identity.

3. Debtor failed to file a credit counseling certificate.

## DISCUSSION

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

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

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

Debtor did not file a certificate of credit counseling as required by 11 U.S.C. § 521(b). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**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 5, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Catherine Lee Cook ("Debtor"), is delinquent \$4,213.67 in plan payments.

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

Debtor filed an Opposition on March 5, 2019. Dckt. 78. Debtor states she will make a payment to cure the delinquency before the hearing date.

#### **DISCUSSION**

Debtor is \$4,213.67 delinquent in plan payments, which represents multiple months of the \$2,171.67 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 a minute order substantially in the following form holding that:

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

hearing.

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 5, 2019. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

**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, Charles A. Ratliff ("Debtor"), is delinquent \$2,910.00 in plan payments
2. Debtor did not appear at the February 21, 2019 Meeting of Creditors. The Meeting was continued to March 21, 2019.

## DISCUSSION

Debtor is \$2,910.00 delinquent in plan payments, which represents one month of the \$2,910.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).



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

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 5, 2019. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

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

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

#### **FEBRUARY 20, 2019 HEARING & COURT ORDER**

At the February 20, 2019 hearing and stated payment was in process to cure the default. Dckt. 58. The court issued an Order continuing the hearing to March 20, 2019 and requiring supplemental Opposition filed March 4, 2019 and Reply filed March 11, 2019. Order, Dckt. 59.

#### **SUPPLEMENTAL OPPOSITION**

Debtor filed an Opposition on March 5, 2019, a day after the deadline set by court Order.

Dckt. 64. Debtor's counsel states the delay was caused by a stomach flu.

Debtor's counsel further states that while the Debtor's payment to Trustee was represented as being pending, Debtor has not made the payment and not communicated with Debtor's counsel.

Debtor's counsel also states an accident occurred post-petition for which Debtor is receiving a \$7,000.00 check made payable to the Trustee. Debtor's counsel states the accident relates to the Class 2 claim of creditor Onemain, which has filed Proof of Claim, No. 8 asserting a secured claim of \$6,000.00 and unsecured claim of \$7,014.23.

## **SUPPLEMENTAL REPLY**

Trustee filed a supplemental Reply on March 11, 2019. Dckt. 66. Trustee states Debtor remains delinquent \$1,530.00 to date, having only made one payment since the case was filed.

## **RULING**

At the prior hearing on the Motion, Debtor's counsel made representations to the court that the payment to cure defaults was pending. Relying on this representation, the court continued the hearing.

Now, it is apparent that the payment was not actually pending.

In continuing the hearing, the court set a briefing schedule, ordering Debtor to file an Opposition March 4, 2019. Order, Dckt. 59. Debtor's counsel did not meet this deadline.

Debtor's counsel attempts to explain the delay as resulting from an "agonizing stomach flu." No evidence was filed, such as a declaration of the Debtor, along with the Opposition. In the Opposition, there are roughly four sentences explaining the case status.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

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

17. [17-21587](#)-E-13      **HEATHER LARSON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Kristy Hernandez**      **2-4-19 [33]**

**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 4, 2019. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Heather J. Larson ("Debtor"), is delinquent \$3,200.00 in plan payments.

#### **DEBTOR'S REPLY**

Debtor filed a Reply March 6, 2019. Dckt. 37. Debtor states she fell behind in payments due to (unspecified) family issues. Debtor states further one payment of \$1,000.00 was made February 12, 2019 and the remainder of the delinquency will be cured before the date of the hearing.

#### **DISCUSSION**

Debtor is at least \$2,200 delinquent in plan payments (Debtor testifying under penalty of perjury a payment of \$1,000.00 has been made(Declaration, Dckt. 38)), which represents slightly more than one month of the \$2,100.00 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).

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



payments.

2. Debtor is in material default of plan section 5.03 because the plan will take 84 months to complete (\$27,069.18 left to be paid in the remaining 43 months, and the monthly payment net of Trustee's fees and contract arrears being \$407.92)

## **DEBTOR'S RESPONSE**

Debtor filed a Response on March 7, 2019. Dckt. 46. Debtor indicates agreement with Trustee and states a modified plan will be filed.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on March 12, 2019. Dckts. 49, 50. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 53. 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 a minute order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 2, 2019. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXXXXXX</span></b>
---

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

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

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

#### **FEBRUARY 20, 2019 HEARING**

At the February 20, 2019 hearing it was reported Debtor has passed away. The court continued the hearing on the Motion to March 20, 2019 at 10:00a.m. to allow Debtor's counsel and Debtor's family time to discuss further case administration.

#### **RULING**

At the hearing, XXXXXXXXXXXXXX.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is  
**XXXXXXXXXXXXXX.**

20.	<a href="#"><u>18-24772-E-13</u></a> <a href="#"><u>RAI-3</u></a>	<b>NICOLE JACKSON</b> <b>Rafael Icaza</b>	<b>CONTINUED MOTION TO CONFIRM PLAN 1-4-19 [72]</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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2019. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Amended Plan is denied.</b>
--

Nicole M. Jackson (“Debtor”) seeks confirmation of the Amended Plan, which would be Debtor’s first confirmed plan. The Amended Plan provides for payments of \$332.22 per month for 2



months, \$364.37 for 31 months, \$200.00 in month 5, and \$114.67 in months 6-15. Dckt. 75. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## **CHAPTER 13 TRUSTEE'S OPPOSITION**

David Cusick ("the Chapter 13 Trustee") filed an Opposition on January 29, 2019. Dckt. 83. Trustee opposes confirmation of the Plan on the following basis:

- A. Debtor is \$1,568.59 delinquent in plan payments.
- B. Debtor is under the median income and has proposed a 33 month plan, while proposing only a 30 percent dividend to the unsecured claims. Trustee believes the plan term should be 36 months.

## **THIRD AMENDED PLAN**

Debtor filed a Third Amended Plan on February 6, 2019. Dckt 86. Debtor filed alongside the Amended Plan a Motion To Confirm seeking to set the plan for confirmation hearing at the same hearing date noticed for the Second Amended Plan, February 12, 2019. Dckt. 87.

The Motion To Confirm states that the Third Plan was amended to increase the plan term from 33 to 36 months, and to increase the monthly payment from \$364.37 to \$370.00. Dckt. 87, ¶ 7. The Third Plan also proposes monthly payments of \$114.67 for 10 months to cure arrears. *Id.*

## **FEBRUARY 12, 2019 HEARING**

At the February 12, 2019 hearing, the court continued the Motion to be heard alongside the Motion To Dismiss. Dckt. 89.

## **TRUSTEE'S STATUS UPDATE**

Trustee filed a Status Update on March 6, 2019 in the Dismissal Matter set to be heard the same day. Dckt. 90. Trustee states Debtor is delinquent \$1,444.46 under the Third Amended Plan filed February 6, 2019.

## **DISCUSSION**

The Chapter 13 Trustee's objections are well-taken.

Debtor is \$1,444.46 delinquent in plan payments. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

At the hearing, xxxxxxxxxxxxxxxx.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not

confirmed.

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 Confirm the Amended Chapter 13 Plan filed by Nicole M. Jackson (“Debtor”) 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 Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**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 November 14, 2018. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

<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, Nicole M. Jackson ("Debtor"), is delinquent \$328.66 in plan payments; and
2. Debtor has not served or set a confirmation hearing for her Amended Plan.

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

Debtor filed an Opposition to the Trustee's Motion on December 26, 2018. Dckt. 66. Debtor states she fell delinquent due to moving costs, and has worked to cure the delinquency, which in turn has interfered with her ability to meet with counsel and discuss her case. Debtor states she plans to meet with her attorney December 28, 2018 to review a new amended plan which can be filed to address Trustee's Motion.

#### **JANUARY 9, 2019 HEARING**

At the January 9, 2019 hearing, the court, the parties in agreement, continued the hearing to

March 20, 2019 to allow Debtor the opportunity to prosecute the amended plan and motion to confirm filed on January 4, 2019. Dckt. 79.

### **TRUSTEE'S STATUS UPDATE**

Trustee filed a Status Update on March 6, 2019. Dckt. 90. Trustee states Debtor is delinquent \$1,444.46 under the Amended Plan filed February 6, 2019.

### **DISCUSSION**

Even under the Third Amended Plan, Debtor is \$1,444.46 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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. [18-25962-E-13](#)      **LEONARDO/FELY MERCURIO**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Pro Se**      **2-20-19 [49]**

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

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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 (*pro se*) and Office of the United States Trustee on February 20, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is <span style="color: red;">XXXXX</span>.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Leonardo Merced Mercurio and Fely Duyanana Mercurio ("Debtor"), have not filed and set for confirmation hearing a new plan since the Trustee's Objection To Confirmation was sustained December 4, 2018.

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

Debtor filed a Response on March 6, 2019. Dckt. 53. Debtor states there was confusion after the last hearing, with Debtor believing Debtor was advised the plan was adequate and the Trustee would communicate and further issues.

Debtor filed an Amended Plan and requests the court schedule a confirmation hearing after the Trustee has had an opportunity to review the plan.

#### **DISCUSSION**

Debtor filed an Amended Plan on March 6, 2019. Dckt. 55. No motion was filed setting the Plan for confirmation hearing, and no evidence was filed with the Amended Plan.

The First Amended Plan steps up plan payments from \$641.67 to \$2,741.67. The plan further increases the unsecured dividend to 3 percent of the \$239,000.00 in unsecured claims. No changes to the Class 1 payments were made.

A review of the court's files reflect that this is Debtor's third recent bankruptcy case. A summary of the two prior cases follows:

A. Chapter 13 Case 18-25067, In *Pro Se*

1. Filed.....August 13, 2018
2. Dismissed.....September 12, 2018
  - a. Dismissed due to failure of Debtor to serve Chapter 13 Plan and set Motion to confirm for hearing. 18-25607;l Dckts. 21, 22.

B. Chapter 13 Case 16-27089, In *Pro Se*

1. Filed.....October 25, 2016
2. Dismissed.....February 1, 2017
  - a. Dismissed due to failure of Debtor to pay filing fees. 16-27089; Dckts. 44, 46.
3. Court sustained objection to confirmation filed by Wells Fargo Bank, N.A. based no failure of plan to provide for curing the arrearage on its secured claim. Dckts. 34, 37. Denial of confirmation was also based on multiple grounds advanced by the Chapter 13 Trustee. Dckts. 33, 38.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

-----.

<p><b>The Motion to Dismiss is granted.</b></p>
---

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

#### **DEBTOR’S RESPONSE**

On November 8, 2018, Debtor filed a Response opposing the Chapter 13 Trustee’s Motion to Dismiss. Dckt. 36. Debtor states there is an ongoing appraisal of the property that is subject of a motion to avoid judicial lien. Debtor argues their conduct is not prejudicial delay to creditors.

## **NOVEMBER 14, 2018 HEARING**

At the November 14, 2018 hearing Debtor reported the appraisal of the property that is subject of a motion to avoid judicial lien is still ongoing. The parties in agreement, the court continued the hearing to February 20, 2019, to allow the appraisal to be completed and an amended plan filed. Dckt. 38.

## **FEBRUARY 20, 2019 HEARING**

At the February 20, 2019 hearing, Debtor's counsel reported that the motion to avoid a judicial lien was withdrawn pending an appraisal of the property. Debtor arguing settlement is likely, the court further continued the hearing.

## **DISCUSSION**

A review of the docket shows that no documents have been filed since the February 20, 2019 hearing. At the hearing, the Debtor reported **XXXXXX**.

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

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

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

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

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



24. [17-22333](#)-E-13      **THOMAS WARREN**      **CONTINUED MOTION TO APPROVE**  
[LBG-301](#)      **Lucas Garcia**      **NOMINATION OF DEBTORS**  
      **1-29-19 [52]**      **REPRESENTATIVE**

**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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on January 29, 2019. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion To Approve Nomination Of Debtor’s Representative 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.

**The Motion To Approve Nomination Of Debtor's Representative is Denied.**

The Debtor, Thomas Edward Warren (“Debtor”) filed the present Motion To Approve Nomination Of Debtor’s Representative seeking an order approving Note Debtor’s sister, Susan Rose (“Debtor’s Sister” or “Proposed Personal Representative”), to be a representative for the Estate pursuant to Federal Rule of Bankruptcy Procedure 1016.

Debtor’s Motion states the following grounds with particularity:

1. Debtor filed this case April 7, 2017. Dckt. 51, ¶ 1.
2. At filing Debtor was under IHSS care with a caregiver but was capable of understanding and personally signing all documents for the filing of

his case. *Id.* at ¶ 2.

3. After a dispute with his caregiver, Debtor was arrested and released to Debtor's Sister. *Id.* at ¶¶ 3-4.
4. Debtor's Sister perceived Debtor's mental state deteriorated, with Debtor having memory lapse and failure to recognize his surroundings. *Id.* at ¶ 5.
5. After discussions with Debtor's Sister, Debtor determined Debtor's Sister should be his caregiver and signed a power of attorney. *Id.* at ¶ 6.
6. Due to Debtor's mental deterioration, the best interests of the parties will be served by appointing Debtor's Sister as a representative pursuant to Rule 1016. *Id.* at ¶¶ 7-8.

The Motion is supported by the Declaration of Susan Rose, the Proposed Personal Representative. Dckt. 54. The Rose Declaration states under penalty of perjury that Debtor's mental health has deteriorated; that she was concerned through fall 2018 Debtor was unable to care for himself physically, financially, and legally; but also that Debtor, an unnamed attorney, and Debtor's Sister determined Debtor had capacity to sign a durable power of attorney.

A copy of the power of attorney filed as an Exhibit indicates it was executed September 27, 2018. Dckt. 55.

## **FEBRUARY 12, 2019 HEARING**

At the February 12, 2019 hearing the court continued the hearing on the Motion to March 20, 2019 allowing Debtor time to provide the court with independent professional testimony (such as Debtor's doctor) of the appropriateness and need for a representative.

## **SUPPLEMENTAL EVIDENCE IN SUPPORT OF THE MOTION**

On March 13, 2019 Debtor filed a supplemental Declaration of Susan Rose. Dckt. 63. The Rose Declaration provides testimony under penalty of perjury that she took the Debtor to see a Dr. Zaheen for a medical evaluation of Debtor's ability to handle legal and financial affairs. The Rose Declaration further provides testimony stating that the Note from Dr. Rokhshana Zaheen filed as Exhibit A ("Doctor's Note") is a Note from such doctor. The Doctor's Note consists of the following:

To Whom It May Concern:

[Debtor] was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.

Please feel free to contact my office, if you have any further questions.

Dckt. 62. The court addresses this “Note,” addressed “To Whom It May Concern” about an unstated “medical condition” below.

## **APPLICABLE LAW**

### **SUBSTITUTION BASED ON INCOMPETENCY**

Where a Debtor is incompetent in a Chapter 13 case, if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. FED. R. BANKR. P. 1016. Federal Rule of Civil Procedure 25, providing for substitution for incompetency, applies in adversary proceedings and contested matters. FED. R. BANKR. P. 7025, 9014(c). In relevant part, the Federal Rules of Civil Procedure provide:

(b) Incompetency. If a party becomes incompetent, the court may, on motion, permit the action to be continued by or against the party's representative. The motion must be served as provided in Rule 25(a)(3).

Fed. R. Civ. P. 25.

### **Applicable Federal Law To Determine Legal Competency Of Party**

California Probate Code §§ 810 et seq.

#### **§ 810. Legislative findings and declarations regarding legal capacity**

(a) For purposes of this part, there shall exist a rebuttable presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions.

(b) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(c) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

## **§ 811. Unsound mind or incapacity**

(a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to execute wills, or to execute trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b), and evidence of a correlation between the deficit or deficits and the decision or acts in question:

(1) Alertness and attention, including, but not limited to, the following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own rational self-interest.

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

- (4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, that is inappropriate in degree to the individual's circumstances.
- (b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.
- (c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.
- (d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a person is of unsound mind or lacks the capacity to do a certain act.
- (e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decision making process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, health care providers who, outside the judicial context, determine the capacity of patients to make a medical decision.

#### **§ 812. Capacity to make decision**

Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

- (a) The rights, duties, and responsibilities created by, or affected by the decision.
- (b) The probable consequences for the decisionmaker and, where appropriate, the persons affected by the decision.
- (c) The significant risks, benefits, and reasonable alternatives involved in the decision.

The Due Process in Competence Determinations Act, Prob. Code, §§ 810 to 813, 1801, 1881, 3201, and 3204, offers a wide range of potential mental deficits that may support a determination that a person is of unsound mind or lacks the capacity to make a decision or to do a certain act. *In re Marriage of Greenway*, 217 Cal. App. 4th 628, 640 (Cal. App. 4th Dist. 2013).

In California, a party is incompetent if he or she lacks the capacity to understand the nature or consequences of the proceeding, or is unable to assist counsel in the preparation of the case. *See* Cal. Prob. Code § 1801; *In re Jessica G.*, 93 Cal. App. 4th 1180, 1186 (2001); *Elder-Evins v. Casey*, 2012 U.S. Dist. LEXIS 92467 (N.D. Cal. July 3, 2012).

## **DISCUSSION**

Federal Rule of Bankruptcy Procedure 1016, cited by Debtor, provides that despite the death or incompetency of a debtor, a Chapter 13 case may proceed and be concluded if further administration is possible and in the best interest of the parties. That rule does not provide a process for the appointment of a representative—Debtor fails to state any legal basis for the relief sought.

At the insistence of the court, Debtor’s counsel and the Proposed Personal Representative have been given the “opportunity” to provide the court with the necessary evidence of independent professional testimony for the court to make the competency determination. In its prior tentative ruling the court provided the above description of competency and determination thereof under applicable state law. However, the best that counsel and Proposed Personal Representative could produce was the following “To Whomever It May Concern” Doctor’s Note:

To Whom It May Concern:

Thomas Warren was seen in my office today. It is my professional opinion that my patient is not capable of making complex, legal and financial decisions due to his medical condition.

Please feel free to contact my office, if you have any further questions.

Exhibit, Dckt. 62. The Note does not provide testimony under penalty of perjury.

Debtor’s attorney has prepared a declaration for Proposed Personal Representative in which she purports to “authenticate” the Note, presumably as some attempt to make it admissible, credible evidence. At best, this is hearsay, in which the sister is purporting to repeat what is in the Note, which purports to be statements made out of court by the Doctor. <sup>FN. 1</sup>

The deficiencies in the purported “Doctor’s Note” are many. First, by it being generically added “To Whom It May Concern,” it appears that the Doctor had no idea why he was being asked to consider the competency of the Debtor. The Doctor was not aware of the significance in what he was saying or that it would be used to limit the Debtor’s ability to access the federal courts. One questions the validity of such a “medical opinion” that is written in such a way that it could be used for any and every purpose to limit or deprive the Debtor of rights.

Second, merely stating his conclusion that “my patient is not capable of making complex, legal and financial decisions due to his medical condition,” without providing the information based on his professional training and experience is of little, if any, assistance to the court in making the necessary determination. *See* Fed. R. Evid. 702.

Third, this “medical opinion” merely states that the Debtor is not capable of making “complex, legal and financial decisions.” Some would say that the average least sophisticated consumer who is a party in bankruptcy court every day might suffer from such “complex decision” limitation. The Doctor offers no indication as to what is meant by “complex” or whether Debtor, represented by independent counsel, is capable of making the normal and usual decisions in his bankruptcy case.

Fourth, there is only a general reference to “medical condition.” This could be a permanent and significant cognitive impairment. Or it may be that Debtor is suffering from a temporary medical condition from which he could recover sufficiently in the near future. The Doctor fails to provide, or withholds, such critical information.

Fifth, the Doctor offers no statement of how he has come to this “Opinion,” the examinations of the Debtor, and how such “Opinion” has been reached after providing adequate medical professional due diligence in conformity with the standards of practice.

The Doctor does not state how long the Debtor has been his “patient,” his consultation with other doctors who have provided medical services to Debtor, or a review of Debtor’s medical history. Rather, based on the Proposed Personal Representative’s testimony, it is she who selected the Doctor who has issued this “To Whom It May Concern” Note.

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FN. 1. The providing of testimony and other evidence in federal court is governed by the Federal Rules of Evidence. These Rules include:

Fed. R. Evid. 601 - Competency to Testify  
Fed. R. Evid. 602 - Need for Personal Knowledge  
Fed. R. Evid. 603 - Oath or Affirmation to Testify Truthfully  
Fed. R. Evid. 701 - Opinion Testimony by Lay Witness  
Fed. R. Evid. 702 - Testimony by Expert Witness  
Fed. R. Evid. 802 - Rule Against Hearsay  
28 U.S.C. § 1746 - Unsworn declarations under penalty of perjury  
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On his bankruptcy Petition, Debtor states that he lives in Auburn, California. Dckt. 1. The Doctor’s is in Reedley, California. Using the Google Maps program, it list Reedley, California as being 222 miles from Auburn, California. Such does not appear to be a doctor who has regularly had Debtor as his patient.

The Proposed Personal Representative’s declaration appears to state that the purported power

of attorney may have been given after the Debtor lost the competency to so do. Original Declaration ¶ 5, Dckt. 54. After the Proposed Personal Representative concluded that the Debtor “was unable to care for himself physically, financially, and legally” (*Id.*) did Debtor approach an attorney to prepare a power of attorney for Debtor. *Id.* ¶ 6.

In her Supplemental Declaration (after the court did not grant the request for appointment of a personal representative), the Proposed Personal Representative qualifies her prior testimony, stating that Debtor could actually care for himself physically and carry on a conversation, but could become confused “from time to time” and could not keep schedule appointments. Supplemental Declaration, ¶ 3; Dckt 63. These statements under penalty of perjury are not consistent with the personal representative’s prior statements under penalty of perjury.

In the Supplemental Declaration the Proposed Personal Representative also states that she took the Debtor to an attorney to obtain a power of attorney. The attorney is not identified (though a law firm is named on the power of attorney). It is not stated whether the attorney was the Debtor’s attorney or the Proposed Personal Representative’s attorney.

With respect to the Doctor’s Note, the Proposed Personal Representative states that she selected a doctor who is 222 miles from Debtor’s residence. Nothing is stated about Debtor’s long time doctor(s) in the Auburn area where he has resided. In her Declaration, the personal representative states that Debtor was released to her custody in the Summer of 2018 after a law enforcement intervention. That was after this case was filed, and Debtor may have moved, may have new doctors, and may no longer reside in Auburn, California. But such testimony is not provided. And again, the Doctor issuing the “To Whom It May Concern” Doctor’s Note does not disclose any investigation with prior doctors of Debtor or review of Debtor’s medical history.

Given that Debtor, Debtor’s counsel, and the Proposed Personal Representative have had two chances at this request, the court concludes that what it has is the best that the Proposed Personal Representative can do. Unfortunately, that is not sufficient for this court to conclude that the Debtor is legally incompetent to proceed in this case.

At this point, the court has no choice then to refer this matter to Adult Protective Services for investigation and report. The court will also refer this to the Federal Public Defender, the U.S. Attorney, and the U.S. Trustee for their consideration of what services exist for parties in a civil proceeding who appear to lack the competency to continue as a party in that proceeding.

The court will also have the Clerk of the Court serve informational copies of this Ruling and Order on :

Rokhshana Zaheem, M.D.  
Community Medical Providers Medical Group  
Community Foundation CMP, Reedly North  
748 Manning Ave  
Reedley, California 93654-2232



and

The Attorney Who Provided Legal Services to Thomas Warren  
Jeppson & Griffin, LLP  
1478 Stone Point Drive, Ste 100  
Roseville, California 95661;

each of whom have independent professional obligations to Thomas Warren, the Chapter 13 Debtor in this bankruptcy case.

The Motion to Appoint Susan Rose, Debtor's Sister, as the personal representative for Debtor in this case is denied.

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

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

The Motion to Substitute filed by Thomas Edward Warren ("Debtor") 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 Approve Susan Rose, the Debtor's Sister, as the Personal Representative of Debtor in this Bankruptcy Case is denied.

The Clerk of the Court shall forward a copy of this Order and the Civil Minutes for the March 20, 2019, to the attention of Jeffery Lodge, Esq., Office of the U.S. Trustee; Heather Williams, the Federal Public Defender, and McGregor Scott, the U.S. Attorney, for review of this case and taking such action, including referral to such federal or state agencies whose duties include providing services or oversight for someone in Debtor's situation.

The court will also have the Clerk of the Court serve informational copies of this Ruling and Order on

Rokhshana Zaheem, M.D.  
Community Medical Providers Medical Group  
Community Foundation CMP, Reedly North  
748 Manning Ave  
Reedley, California 93654-2232

and

The Attorney Who Provided Legal Services to Thomas Warren

Jeppson & Griffin, LLP  
1478 Stone Point Drive, Ste 100  
Roseville, California 95661;

each of whom have independent professional obligations to Thomas Warren, the Chapter 13 Debtor in this bankruptcy case.

25. [17-22333-E-13](#)      **THOMAS WARREN**      **CONTINUED MOTION TO DISMISS**  
[DPC-2](#)      **Lucas Garcia**      **CASE**  
9-10-18 [\[40\]](#)

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

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

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

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

<b>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on xxxxx, 2019.</b>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Thomas Warren ("Debtor") is \$671.00 delinquent in plan payments, which represents slightly more than one month of the \$650.00 plan payment. Before the hearing, another plan payment will have become due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues further that Debtor is in material default under the Plan. Approximately \$14,185.00 remains to be paid under the confirmed plan (excluding future monthly contract installment amounts), which would require 70 months of the \$205.00 payment (net of Trustee fees and monthly contract installments). Debtor will complete the Plan in 86 months, not the 60 months proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the

Bankruptcy Code. Failure to resolve these issues puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

## **DEBTOR'S OPPOSITION**

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

1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.
2. The debtors live-in Roommate who contributes all of her income to the household (her name is Lori Childe), lost her IHSS income in June and was unable to gain more income (from Disability) until early September.
  - a. Due to recuperating income payments sufficient to catch up will be submitted on or before this hearing.
3. Finally, the trustee raises the fact that their calculations project an over extension of the plan time frame. This calculation has not been confirmed by counsel and will also take reviewing of all claims in further detail to ensure that no objections to claim or portion of claim needs to be filed.

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

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

## **OCTOBER 10, 2018 HEARING**

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

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

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

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

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

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

#### **NOVEMBER 14, 2018 HEARING**

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

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

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

#### **FEBRUARY 20, 2019 HEARING**

At the hearing, the court continued the hearing to March 20, 2019 to be heard alongside the Debtor's Motion to Approve Nomination of Debtor's Representative.

#### **DISCUSSION**

The court has denied the Motion to appoint Susan Rose as the personal representative. The Motion and documents filed therewith raised serious concerns for the court concerning counsel for Debtor and Ms. Rose.

The court is referring this matter to Adult Protective Services, the U.S. Trustee, the Federal Public Defender, and U.S. Attorney.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is **XXXX**.

## FINAL RULINGS

26. [19-20370-E-13](#)      ANDREY KOLESNIKOV      MOTION TO DISMISS CASE  
[DPC-3](#)      3-4-19 [40]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 4, 2019. By the court's calculation, 16 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.

**The hearing on the Motion to Dismiss is continued to 10:00 a.m. on April 24, 2019.**

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

1. the debtor, Andrey Kolesnikov ("Debtor"), failed to appear at the Meeting of Creditors on February 28, 2019. The Meeting was continued to March 28, 2019.
2. Debtor is delinquent \$100.00 in plan payments.
3. Debtor has not provided a copy of or transcript for his most recent prepetition year tax filing.
4. Debtor has not filed a certificate of credit counseling.

### DISCUSSION

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable

delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Debtor is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor did not file a certificate of credit counseling as required by 11 U.S.C. § 521(b). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Review of Plan**

Debtor's Chapter 13 Plan filed in this case provides for making payments of \$100 a month for thirty-six (36) months. Dckt. 13. No provision is made for payment of Class 1 Claims, Class 2 Claims, Class 3 Claims, Class 4 Claims, Class 5 Claims, or Class 7 Claims. For Class 6, special treatment unsecured claims, a payment of \$600 a month. Debtor does not state any reason for special treatment in Class 6.

One proof of claim has been filed in this case, a secured claim for \$442,610.30 for NRZ REO X, LLC, U.S. Bank, N.A., as trustee. Proof of Claim No. 1. An arrearage of \$226,045.06 is stated in Proof of Claim No. 1. No secured claims on listed by Debtor on Schedule D. Dckt. 14.

### **Pending Motion for Relief**

NRZ REO X LLC has filed a Motion for relief from the stay, including relief pursuant to 11 U.S.C. § 362(d)(4). Dckt. 25. That Motion is set for hearing on March 26, 2019. Dismissal of this case before resolution of that Motion would not be appropriate.

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 10:00 a.m. on April 24, 2019.

27. [18-27801](#)-E-13      **ROBERT SCOTT**  
**Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**2-21-19 [27]**

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 23, 2019. The court computes that 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on February 15, 2019.

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

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

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

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

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

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



28. [14-32002](#)-E-13 KAO SAECHAO AND MYHANH MOTION TO DISMISS CASE  
[DPC-3](#) NGUYEN 2-5-19 [[94](#)]  
Kyle Schumacher

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

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

- |     |  |                                   |   |
|-----|--|-----------------------------------|---|
| 29. | <a href="#"><u>18-27506</u></a> -E-13<br><a href="#"><u>DPC</u></a> -3 | CHRISTA HYLEN<br>Peter Cianchetta | CONTINUED MOTION TO DISMISS<br>CASE<br>1-23-19 [ <a href="#">16</a> ] |
|-----|--|-----------------------------------|---|

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 12, 2019, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Motion; 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 Christa Lynne Hylen (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**LYNETTE EDWARDS**  
**Muoi Chea**

**MOTION TO DISMISS CASE**  
**2-5-19 [18]**

=====

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 24, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

March 20, 2019 at 10:00 a.m.  
- Page 58 of 73 -

31. [18-26313](#)-E-13 JENNEL HARRIS  
Paul Bains

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-7-19 [55]**

**DEBTOR DISMISSED: 02/25/19**

**Final Ruling:** No appearance at the March 20, 2019 hearing is required.  
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The case having previously been dismissed, the Order To Show Cause is discharged as moot.

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

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

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

**IT IS ORDERED** that the Order To Show Cause is discharged as moot, the case having been dismissed.

32. [19-20135](#)-E-13 JEANETTE NOLAN  
Thoms Amberg

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-14-19 [\[16\]](#)**

**Final Ruling:** No appearance at the March 20, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 16, 2019. The court computes that 32 days' notice has been provided.

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

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 11, 2019. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 James William Casey ("Debtor") is \$1,900.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$1,900.00 delinquent in plan payments, which represents multiple months of the \$950.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

34. [17-25464-E-13](#) **DULON STEVENS** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mary Ellen Terranella** **2-19-19 [29]**

**Final Ruling:** No appearance at the March 20, 2019 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 13, 2019, Dckt. 35; 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 Dulon Stevens (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 35, 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.

35. [18-21768-E-13](#)      KATRINA CULVERSON      MOTION TO DISMISS CASE  
[DPC-1](#)      Scott Hughes      2-5-19 [\[32\]](#)

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the March 20, 2019 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 a Notice of Withdrawal which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on March 7, 2019, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Katrina Culverson (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, 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.

36. [18-26475](#)-E-13      AMANDA SHRINER  
Richard Jare  
2-19-19 [[56](#)]

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**

**Final Ruling:** No appearance at the March 20, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 21, 2019. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on February 12, 2019.

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

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

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

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

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

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



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

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<p><b>The Motion To dismiss is dismissed without prejudice.</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, 2019, Dckt. 34; no prejudice to the responding party appearing by the dismissal of the Motion; 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 Ken Subia, the debtor (“Debtor”); the Ex Parte Motion is granted, the Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 34, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the March 20, 2019 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 12, 2019, Dckt. 44; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Pavel Yermolov (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

39. [18-27651](#)-E-13 VIVIAN TOLIVER  
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-15-19 [\[23\]](#)**

**Final Ruling:** No appearance at the March 20, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 17, 2019. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77 due on February 11, 2019.

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

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

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

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

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

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

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

-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 12, 2019, Dckt. 58; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Marcis and Marti Beutler (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

41. [18-27680](#)-E-13      **CHERYL BLACK**  
   **Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**2-15-19 [39]**

**DEBTOR DISMISSED: 02/25/19**

**Final Ruling:** No appearance at the March 20, 2019 hearing is required.  
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The case having previously been dismissed (Dckt. 44), the Order to Show Cause for failure to pay fees is discharged as moot.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, the case having been dismissed.

**Final Ruling:** No appearance at the March 20, 2019 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 5, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 he debtor, Ocie Beatrice Buckner ("Debtor"), is delinquent \$780.00 in plan payments.

## DISCUSSION

Debtor is \$780.00 delinquent in plan payments, which represents multiple months of the \$330.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

43.     [18-24688-E-13](#)     **ELIZABETH/ELRICO MOORE**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **David Foyil**           **2-5-19 [55]**

**Final Ruling:** No appearance at the March 20, 2019 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 5, 2019. By the court’s calculation, 43 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 the debtors, Elizabeth Moore and Elrico Moore (“Debtor”), are 800.00 delinquent in plan payments.

## DISCUSSION

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

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

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

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

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

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

44. [15-29518-E-13](#) **DENNIS MORAIRTY** **MOTION TO DISMISS CASE**  
[DPC-2](#) **John Maxey** **2-4-19 [36]**

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on March 15, 2019, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; 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 the debtor, Dennis Morairty (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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



The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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