

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Ronald H. Sargis**

**Chief Bankruptcy Judge**

**Sacramento, California**

**May 19, 2021 at 9:00 a.m.**

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1. **16-20005-E-13**      **BEVERLY BAUER**      **MOTION TO DISMISS CASE**  
**DPC-2**      **Mary Ellen Terranella**      **4-14-21 [169]**

**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 April 14, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

**DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 4, 2021. Dckt. 173. Debtor states having cured the deficiency with a series of payments made in April and May.

**DISCUSSION**

**Delinquent**

Debtor is \$5,519.30 delinquent in plan payments, which represents multiple months of the \$2,000 plan payment. Before the hearing, another plan payment will be due. Failure to make plan

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

At the hearing counsel for the Trustee reported **xxxxxxxxxx**

The Motion to Dismiss is **xxxxxx**.

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

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

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

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

2.     **19-23208-E-13**     **PAUL/PAMELA ROBERTS**     **MOTION TO DISMISS CASE**  
          **DPC-2**           **Matthew DeCaminada**       **4-20-21 [75]**

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

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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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Paul Wayne Roberts and Pamela Lee Roberts (“Debtor”), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 3, 2021. Dckt. 79. Debtor states that they have been unable to make payments due to a temporary reduction of income after Debtor Pamela took leave from work after a death in the family. Debtor asserts that they will file a modified plan in order to address the default.

## **DISCUSSION**

### **Delinquent**

Debtor are \$12,445.00 delinquent in plan payments, which represents multiple months of the \$2,625.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXX.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Iesha Shaney Nickerson ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 5, 2021. Dckt. 69. Debtor states the delinquency has been addressed by making two payments totaling \$550.

## **DISCUSSION**

### **Delinquent**

Debtor is \$450.00 delinquent in plan payments, which represents multiple months of the \$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).

At the hearing counsel for the Trustee reported XXXXXXXXXX

The Motion is XXXXX.

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**.

4. [20-20212-E-13](#)      **SHANNON BUTLER**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Bert Vega**                      **3-24-21 [81]**

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

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Local Rule 9014-1(f)(1) Motion—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 March 24, 2021. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Shannon Todd Butler (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed an incomplete Response on May 11, 2021. Dckt. 85. The Response is only the last page of what the court assumes is an opposition to the motion. Debtor also filed Exhibit A in support of this incomplete response, which are unauthenticated copies of payment confirmations emailed

by TFS. Dckt. 86.

## **DISCUSSION**

### **Delinquent**

Debtor is \$521.00 delinquent in plan payments, which represents one month of the \$523.00 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).

At the hearing xxxxxxxx

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 24, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 April 14, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**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, Thurman Farris Jones ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITIONS**

Debtor personally filed three separate Oppositions on April 23, 2021, April 26, 2021, and April 27, 2021. Dckt. 24, 25, 26. Debtor disputes the amount owed as stated by Trustee, that he finished payment of his plan in full as of December 2020, and that Trustee is overcharging fees.

Debtor is represented by counsel, but Debtor's counsel has not filed any opposition for Debtor.

## **DISCUSSION**

### **Delinquent**

By the Trustee's calculation, Debtor is \$8,285.36 delinquent in plan payments, which represents 5.4 months of the \$1,526.00 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's confirmed Chapter 13 Plan, Dckt. 5, requires Debtor to make monthly payments of \$1,528.00 for sixty (60) months. That totals \$91,680.00.

On December 18, 2018, a stipulated *Ex Parte* Motion was filed that modifies the Plan to

provide that, from \$13,095.31 in insurance proceeds received when Debtor's 2013 Dodge Charger was totaled, \$9,122.84 would be paid into the Plan and used to pay off the remaining secured claim of Safe Credit Union and the Chapter 13 Trustee's fees relating to such lump sum payment, and the balance refunded to the Debtor. Motion and Order; Dckts. 17, 18. The Trustee's statement of payments received from the Debtor includes the \$13,095.31 payment. Dckt. 20 at 2.

With the above payment in December 2018, then there was no further payment to be made to Safe Credit Union on its Class 2 secured claim.

The Trustee's Motion states that Debtor has paid a total of \$70,427.95 through December 7, 2020, and the Trustee computes that \$78,713.31 is due. Motion, p. 1:20-22; Dckt. 20.

In his first Opposition filed on April 24, 2021, Debtor states that he protests the amount the Trustee states is due. He directs the court to a document filed on April 16, 2018 showing that his balance was \$69,493.45. Dckt. 24. The document referenced, and to which the sixth page of which is attached to the first Opposition, is the Trustee's Notice of Claims Filed report. The report states that there are \$25,071.79 in secured claims filed as of the April 2018 Report (which includes the Safe Credit Union Claim above that was paid from the insurance proceeds) and \$69,493.45 in general unsecured claims. That totals \$94,565.24 in claims, plus interest on the secured claims.

In his second Opposition filed on April 26, 2021, Dckt. 25, stating that in an October 1<sup>st</sup> letter from his lawyers, it clearly states that Debtor owed \$70,427.95, which he had paid in full on December 2020. The attorney-client communication that Debtor attached to the second Opposition includes the following:

- A. Counsel is following up on Debtor's request to dismiss his Chapter 13 case.
- B. The Chapter 13 Plan estimates the amount of unsecured (Class 7) claims, with that amount subject to increase or decrease based on the claims actually filed.
- C. In the Plan Debtor and Counsel estimated the unsecured claims to be \$55,822.13, but the actual amount of unsecured claims filed were \$70,427.95.

(It appears that the dollar amount different from the Trustee's report is that Discover Bank filed Amended Proof of Claim 1-2 which included the judgment and an assertion that \$934.50 of the claim was secured, and Counsel's computation may not have taken the \$934.50 as being secured into account. Proof of Claim No. 1-2 does not identify the collateral or the basis of perfecting a lien, other than to state that a judgment was obtained. Thus, the actual unsecured claim may be the higher amount as computed by Debtor's Counsel.)

- D. The letter concludes that Debtor's Plan requires a 100% dividend on creditors with general unsecured claims, and therefore the \$70,427.95 must be paid to creditors with unsecured claims.

In his third Opposition filed on April 27, 2021, Debtor states that if one looks at the document filed on April 16<sup>th</sup> of 2018, one can see that his balance was \$69,493.45, and that the Trustee asserting a delinquency of \$8,285.36 is above the amount permitted by law for Trustee fees. Dckt. 26.



Debtor asserts that the alleged default is “padding of [the Trustee’s] bill.” *Id.*

Looking at the Plan and taking into account the insurance payment made, the court’s rudimentary accounting is as follows:

Claim to Be Paid		Total Payments Required	Total Amount Paid Through Plan
Class 2 IRS Secured Claim	(\$7,365.72) Proof of Claim 3-1	60 Payments with 4% interest	\$8,139.06
Class 2 Safe Credit Union Secured Claim	(\$17,7706.07) Proof of Claim 4-1	13 Payments with 4% Interest totaling \$9,499.56 and ah Lump Sum Payment of \$9,122.84 in December 2018.	\$18,622.40
General Unsecured Claims	\$69,493.45 (Excluding the \$934.50 listed as secured on Proof of Claim No. 1-2)	\$69,493.45	\$69,493.45
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	Required Distributions to Creditors		\$96,254.91
	Chapter 13 Trustee Fees of 10% For Each Plan Payment Made		\$9,624.50
			=====
	<b>Total Required Plan Payments</b>		<b>\$105,879.41</b>

The first Plan payments having been made in October 2017, the sixtieth payment comes due in September 2022.

The Trustee’s Motion states that as of December 7, 2020, Debtor has funded the Plan with \$70,427.95, and is delinquent \$8,285.23 in Plan payments (as noted above, this is 5.4 months) for the months of January, February, March, and April 2021. It appears that Debtor was short in monthly payments in October 2019 through March 2020 and September through December 2020, but paid some additional amounts in 2018.

With monthly plan payments of \$1,526.00 for 60 months, which total \$91,560, it appears that the Plan is underfunded by approximately (\$14,319.41).

At the hearing ~~XXXXXXXX~~

~~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.~~

6. [19-21026-E-13](#)      **LISA MOORE**      **MOTION TO DISMISS CASE**  
[DPC-4](#)      **Steele Lanphier**      **3-24-21 [124]**

**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 March 24, 2021. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Lisa Lynn Moore (“Debtor”), has failed to confirm a plan.

#### **DEBTOR’S REPLY**

Debtor filed a Reply on May 5, 2021. Dckt. 128. Debtor explains the delay in proposing a

new plan was due to confusion at Counsel's office where a clerical error indicated that the prior plan had been confirmed. Debtor apologizes for the delay and requests an opportunity to file a new plan which will be filed by May 6, 2021.

## **DISCUSSION**

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 14, 2020. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor explains the delay in setting a plan for confirmation since the last proposed plan was denied confirmation. A review of the docket for this case shows that Debtor has not yet filed a Motion to Confirm and a proposed plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is XXXXX.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Laura Ann Salinas ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 7, 2021. Dckt. 48. Debtor states having made a large payment in the amount of \$5,000 and that a proposed plan will be filed prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,746.76 delinquent in plan payments, which represents multiple months of the \$3,446.49 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).

As of the court's drafting of this pre-hearing disposition, no new plan has been filed.

At the hearing XXXXXXXX

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**.

8. [19-25539-E-13](#)      **SAYED/SHEILA SHAH**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Peter Macaluso**                      **4-21-21 [18]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Sayed Naim Shah and Sheila Diann Shah (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 4, 2021. Dckt. 22. Debtor has been unable to meet with Counsel and request a continuance to allow for Debtor and Counsel to meet to draft, review and sign a modified plan. Debtor filed a Declaration on May 14, 2021 testifying that they have instead decided to cure the default prior to the hearing and on May 14 made a payment for \$9,934.17. Dckt. 24. In support of the Declaration, Debtor filed Exhibit A, a copy of the TFS dashboard indicating Debtor scheduled a payment in the amount of \$9,935.00. Dckt. 25.

## **DISCUSSION**

### **Delinquent**

Debtor are \$9,109.65 delinquent in plan payments, which represents multiple months of the \$3,724.52 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).

At the hearing Trustee informed the court **xxxxxxx**

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 Debtors, Debtor's Attorney, and Office of the United States Trustee on April 5, 2021. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor 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 <del>granted</del>, and the case is <del>dismissed</del>.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Robin Arlene Harland and Thomas Scott Harland ("Debtor"), is delinquent in plan payments, and
2. Failed to file an amended plan and set it for confirmation.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 5, 2021. Dckt. 56. Debtor agrees that there is a default in plan payments and explains to the court that she has recently discovered that she is the heir to her mother's probate estate. The estate includes a residence and Counsel is in communication with the probate counsel and should have more information shortly. Debtor requests the opportunity to file a plan that uses the funds from the probate and their own income to pay their creditors in full. Debtor anticipates filing a second amended plan shortly.

## DISCUSSION

### Delinquent

Debtor are \$8,445.00 delinquent in plan payments, which represents multiple months of the \$4,415.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## No Pending Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 26, 2021. A review of the docket shows that Debtor has filed a new plan and 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).

## Plan and Motion to Confirm Filed

Debtor has filed a Second Amended Plan (Dckt. 62) and Motion to Confirm (Dckt. 60) to address the defaults. The Motion to Confirm the Second Amended Plan states with particularity the following grounds and relief requested as required by Federal Rule of Bankruptcy Procedure 9013:

Stephen M. Reynolds, on behalf of Robin Harland and Thomas Harland, hereby requests that the Court enter an order confirming their Second Amended Chapter 13 Plan dated April 20, 2021, and for such other and further relief as the Court deems proper.

This motion is based on this Notice, the Offer of Proof and Memorandum in Support of Plan Confirmation, the Declaration of Robin A. Harland in Support of Second Amended Chapter 13 Plan Confirmation and the Second Amended Chapter 13 Plan, as well as the papers on file in the bankruptcy case and on such argument or evidence as may be presented at the hearing on this Motion.

Motion, Dckt. 60. Clearly, the Motion does not state any grounds with particularity. As the rules of pleading have long been enforced in this court, merely directing the court to canvas every document filed in the bankruptcy case and then use the court's time and personnel to assemble a motion and the supporting evidence is not permitted.

The "Motion" is supported by the Declaration of debtor Robin Harland. Dckt. 63. In the Declaration, Ms. Harland states that Debtor will make a \$3,582.00 per month payment to the Trustee, and within 24 months of confirmation pay the sum of \$80,000 into the plan from proceeds of Ms. Harland's mother's probate estate. Declaration, ¶ 4; Dckt. 63. It is stated that Debtor's inheritance is projected to be \$80,000 to \$100,00, and Debtor will make all of it available (projecting it at \$80,000 out of an "abundance of caution"). *Id.*

Ms. Harland also provides her professional opinion that the Second Amended Plan "complies with the provisions of Chapter 13 and with other applicable provisions of the US Bankruptcy Code." *Id.*, ¶ 5.a. <sup>FN.1.</sup>

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FN. 1. On Schedule I debtor Robin Harland states that she receives Social Security benefits and a pension. Dckt. 1 at 31-32. A check of the State Bar of California website discloses that the State Bar does not list a Robin Harland as either currently or in the past having been an attorney license to practice law in the State of California.  
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Additionally, with respect to treatment of secured claims, Ms. Harland is unsure of the treatment provided, but that it is either that: (1) the creditor has accepted the Plan, (2) Debtor is surrendering the collateral to the creditor, or (3) the creditor will retain the lien securing the claim until the present value of the secured claim is paid. *Id.*, ¶ 5.f. It appears that Ms. Harland does not know what is purports to do under the Plan as it relates to secured claims. <sup>FN.2.</sup>

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 FN. 2. The Second Amended Plan requires Debtor to fund a \$2,247.36 current post-petition mortgage payment and a \$532.14 arrearage cure payment to Wells Fargo on its Class 1 secured claim. Second Amended Plan, ¶ 3.07. There are no other secured claims to be paid through the Plan.  
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Though Debtor appears to be trying to fund this plan with serious money and provide a 100% dividend to creditors holding unsecured claims, the Motion to Confirm and Supporting Declaration do not advance such Plan to confirmation. When a layperson signs a declaration providing testimony for which no foundation exists, such as a legal opinion, the court wonders whether the witness even read the declaration. Of if they did, whether what it said was that person's testimony under penalty of perjury did not matter, so long as their attorney told them that "if you sign this, then you can WIN!!!!!!!!!!!!!!"

The Motion is Granted and the case is dismissed. Such a dismissal is without prejudice to Debtor commencing a new Chapter 13 case, provide personal knowledge testimony, and prosecute that case to confirmation. <sup>FN.3.</sup>

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 FN. 3. In looking at this court's files, debtors Robin and Thomas Harland have had several recent bankruptcy cases that were filed and dismissed:

Chapter 13 Case 19-233735 Represented by Counsel	Filed: June 12, 2019  Dismissed: July 8, 2020	The Chapter 13 Trustee brought the Motion to Dismiss when Debtor was \$9,220.08 delinquent in plan payments (more than 2 months). 19-233735; Civil Minutes, Dckt. 68	
Chapter 13 Case 17-28472 Represented by Counsel	Filed: December 31, 2017  Dismissed: June 7, 2019	The Chapter 13 Trustee brought the Motion to Dismiss when Debtor was \$12,837.01 delinquent in plan payments (3 months). 17-28427; Civil Minutes, Dckt. 101.	
Chapter 13 Case 17-22209 Represented by Counsel	Filed: April 3, 2017  Dismissed: November 21, 2017	The case was dismissed due to Debtor's failure to prosecute that case and obtain confirmation of a Chapter 13 Plan within the 135 day conditional dismissal period (the court having extended the original 75 day period upon request of Debtor). 17-22209; Order, Dckt. 41.	

Chapter 13 Case 16-22157 Represented by Counsel	Filed: April 5, 2016  Dismissed: February 8, 2017	<p>The case was dismissed when Debtor was \$3,602.11 in default (more than one month) in plan payments. 16-22157; Civil Minutes, Dckt. 62. The court did not find Debtor's opposition to be persuasive, the court stating in the Civil Minutes:</p> <p style="padding-left: 40px;">“Debtors opposition is that the default doesn't matter because the plan has so long to run the default will be paid in some unknown amounts at unspecified times.</p> <p style="padding-left: 40px;">Debtor could not provide the court with how, if the financial information provided under penalty of perjury was accurate, Debtor could increase the plan payments. Debtor does not present the court with a credible, financially logical analysis to oppose the Motion to Dismiss.”</p> <p><i>Id.</i></p>
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It appears that Debtor, notwithstanding the assistance of very knowledgeable counsel, has reaped the benefits of Chapter 13 for the past sixty-two (62) months - which is longer than the allowed sixty months for a Chapter 13 plan - while failing to prosecute those cases and perform the Plans as promised/confirmed. Though no barring Debtor from attempting yet another case, and it may be that the inheritance will be the financial fix that has eluded Debtor these past five years, it may also be that the inheritance follows the other past five years of money down the financial drain.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 19, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Roldan Biansat Sebedia ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 4, 2021. Dckt. 121. Debtor states that he took time off work after being affected by COVID-19 and will cure the delinquency prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,500.00 delinquent in plan payments, which represents multiple months of the \$3,150.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

The court shall issue 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. [20-20745-E-13](#)      **LEE NEWTON**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Nima Vokshori**                      **4-21-21 [70]**

**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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Lee Ann Newton (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 5, 2021. Dckt. 74. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,999.76 delinquent in plan payments, which represents multiple months of the \$2,491.76 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

The court shall issue 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 April 19, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Kenneth Roger Tabor ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 4, 2021. Dckt. 216. Debtor states the delinquency will be cured prior to the hearing date, or, in the alternative, if the default cannot be cured, Debtor will file a modified plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,255.00 delinquent in plan payments, which represents multiple months of the \$1,895.99 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file a 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.

13. [17-22651](#)-E-13      **MARIO/CHRISTINE BORREGO**      **MOTION TO DISMISS CASE**  
[DPC-5](#)                      **Mark Wolff**                      **4-19-21 [107]**

**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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

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

## **DISCUSSION**

### **Delinquent**

Debtor are \$3,208.96 delinquent in plan payments, which represents multiple months of the \$1,165.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 April 20, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**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, Francisco Rodriguez ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Response on May 5, 2021. Dckt. 52. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$9,227.24 delinquent in plan payments, which represents multiple months of the \$2,306.81 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.

**No Appearance of Debtor's Counsel Required If He  
Has Confirmed That the Trustee Will Request This  
Hearing Be Continued in Light of the Reported  
Forbearance Agreement That Debtor is Working On**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 19, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, David Charles Emberlin ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$19,447.40 delinquent in plan payments, which represents multiple months of the \$3,312.93 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 hearing on the Motion to Dismiss is  
~~XXXXXX granted, and the case is dismissed.~~

16.	<a href="#"><u>19-22960</u></a> -E-13 <a href="#"><u>DPC-2</u></a>	<b>JOSE OCHOA</b> <b>Richard Jare</b>	<b>MOTION TO DISMISS CASE</b> <b>4-20-21 [55]</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.

-----  
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 April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is 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, Jose Alfredo Ochoa (“Debtor”), is delinquent in plan payments.

#### **DUE DILIGENCE STATEMENT**

Debtor filed a statement of Due Diligence on May 5, 2021. Dckt. 59. Debtor’s Counsel informs the court that he left a message for Debtor and spoke to Debtor’s daughter regarding finances

but was unable to obtain information from her.

## **DISCUSSION**

### **Delinquent**

Debtor is \$15,800.00 delinquent in plan payments, which represents multiple months of the \$3,000.00 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.

**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 April 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Okharina O. Holmes ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 5, 2021. Dckt. 78. Debtor states that on May 3, 2021 she made a payment in the amount of \$3,409.77 and the rest of the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,199.73 delinquent in plan payments, which represents multiple months of the \$3,467.65 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).

At the hearing Trustee reported **xxxxxxxx**

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.

18. [18-23465-E-13](#) **JANET MOON** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Michael Hays** **4-14-21 [26]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Janet Lynn Moon (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on May 5, 2021. Dckt. 30. Debtor requests additional time to file a modified plan in order to address the default to be set for hearing on June 9th, 2021.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,470.00 delinquent in plan payments, which represents multiple months of the \$245.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

As of the court's drafting of this pre-hearing disposition, Debtor has not filed a modified plan. At the hearing ~~xxxxxxx~~

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

~~The court shall issue 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.~~

19. [19-23267-E-13](#)      **MICHAEL/CHRISTINA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **CORONADO**                      **4-20-21 [25]**  
                                    **Gabriel Liberman**

**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 Debtors, Debtor's Attorney, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Michael Wayne Coronado and Christina Marie Coronado ("Debtor"), is delinquent in plan payments.



## DEBTOR'S RESPONSE

Debtor filed a Response on May 4, 2021. Dckt. 29. Debtor states the delinquency is due to COVID-19 related matters and that they have recently made two \$7,000 payments and the rest of the delinquency will be cured prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor are \$15,322.62 delinquent in plan payments, which represents multiple months of the \$5,241.65 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).

At the hearing Trustee reported xxxxxxxx

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 Debtors, Debtor's Attorney, and Office of the United States Trustee on March 24, 2021. 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).

**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, Douglas Paul Jacobs and Kim Marie Jacobs ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed Response on May 5, 2021. Dckt. 102. Debtor states the delinquency will be cured or they will propose a confirmable plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor are \$21,753.00 delinquent in plan payments, which represents multiple months of the \$5,751.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 12, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately for Debtor, a promise to pay or file an amended plan is not evidence that

resolves the Motion.

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

The court shall issue 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.

21. [16-25089-E-13](#)      **MARK/JENNIFER GALISATUS**      **MOTION TO DISMISS CASE**  
[DPC-5](#)                      **Daniel Davis**                      **4-19-21 [88]**

**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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Mark Timothy Galisatus and Jennifer Ellen Galisatus (“Debtor”), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 4, 2021. Dckt. 92. Debtor states that they intend to file an amended plan and set it for hearing after meeting with Trustee, and that they have made one payment to Trustee and will make an additional payment prior to the hearing.

## **DISCUSSION**

### **Delinquent**

Debtor are \$16,966.00 delinquent in plan payments, which represents multiple months of the \$3,252.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

The court shall issue 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on April 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Justin Lee Robinson and Angela Alyssa Robinson ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 5, 2021. Dckt. 129. Debtor states that they are working on getting relief through the forbearance process and will propose a new plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor are \$29,486.73 delinquent in plan payments, which represents multiple months of the \$5,214.73 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.

23. [19-25196-E-13](#)      **JAMI KEAR**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Matthew DeCaminada**      **4-20-21 [84]**

**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 April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<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 the debtor, Jami Lynn Kear (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 5, 2021. Dckt. 96. Debtor will file a Motion to Convert to a Chapter 7 case prior to the hearing.

#### **DISCUSSION**

##### **Delinquent**

Debtor is \$816.00 delinquent in plan payments, which represents multiple months of the

\$205.00 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).

As of the court's drafting of this pre-hearing disposition, Debtor had not yet filed the Motion to Convert.

At the hearing xxxxxxxx

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 March 24, 2021. 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).

**The Motion to Dismiss is XXXXX.**

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

1. the debtors, Lesslie Dean Sparks and Maranda Dawn Sparks ("Debtor"), failed to file an Amended Plan, and
2. Debtor failed to provide pay advices.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 5, 2021. Dckt. 45. Debtor states that a proposed plan has been filed which will make them current and that Debtor have begun renting a room in their residence in order to increase their income to increase their plan payment and that new Schedules I and J have been filed.

## **DISCUSSION**

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

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

In their Opposition, Debtor has not explained why Trustee has not received pay advices.



## FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on March 31, 2021. Dckts. 35, 34. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 38. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity).

However, moving to the Debtor's declaration, Dckt. 38, it causes the court concern as to the credibility of Debtor and the ability to testify under penalty of perjury. While stating under penalty of perjury that they have personal knowledge and can testify to facts as required by Federal Rule of Evidence 601 and 602, Debtor testifies under penalty of perjury, identified by paragraph number used in the Declaration:

7. The plan complies with applicable law.

There is nothing in the record establishing either of the two debtors having a legal education or other specialized, personal knowledge so as to state under penalty of perjury such legal conclusion. Rather, it appear that Debtor either signed the Declaration without reading it or has signed it with the attitude of "I say whatever my attorney tells me to say, because if I do - Then I WIN!"

8. The plan has been proposed in good faith and not by any means forbidden by law under 11 U.S.C. § 1325(a)(3)[.]

Again, Debtor shows no basis of having the legal training or knowledge to provide the court with the legal conclusion that what they are doing is "not by any means forbidden by law." Additionally, Debtor merely dictating a legal conclusion of "good faith" does not provide the court with any evidence by which the court can conclude that Debtor is acting in good faith. To the contrary, by signing this Declaration, Debtor's good faith is put into doubt.

The need to comply with Federal Rule of Bankruptcy Procedure 9013 to have a motion state with particularity the grounds upon which the requested relief is based is not a new Rule promulgated by the Supreme Court, nor is this court requiring compliance with the Rule something new. The same is true as to a witness providing personal knowledge testimony as required under the Federal Rules of Evidence, and not merely dictate to the court findings and conclusions.

Except for the statements discussed above, the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Trustee filed a Reply to the Opposition stating that Debtor are delinquent under the newly proposed plan in the amount of \$2,259.72 and argues that Debtor must be current in plan payments as of the date of the hearing on this instant motion or the case may be dismissed. Dckt. 47.

At the hearing xxxxxxxx

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 **xxxxx**.

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

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Local Rule 9014-1(f)(1) Motion—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 April 19, 2021. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Ted Katsinis and June A. Katsinis ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Response on May 13, 2021. Dckt. 40. Debtor states having made a payment on April 22, 2021 in the amount of \$1,836.00 which was received by the Trustee on April 27, 2021. Moreover, Debtor asserts that they are in contract to sell 10 heifers at \$1,000 with payment to be received by May 22, 2021 and, based on this potential sale, requests the court provide a conditional order allowing them until May 28th so that they may remit the remaining amount in default.

## DISCUSSION

### Delinquent

Debtor are \$5,508.00 delinquent in plan payments, which represents multiple months of the \$1,836.00 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).

At the hearing xxxxxxxx

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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on March 19, 2021. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

The Motion to Reconvert Case and/or Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Reconvert Case and/or Motion to Dismiss is <span style="color: red;">XXXXX</span>.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks to convert this case, initially filed under Chapter 7 and subsequently converted to Chapter 13, back to a case under Chapter 7, or in the alternative, dismissal of this Chapter 13 case. Trustee asserts that the case should be converted or dismissed on the basis that:

1. Debtor has engaged in unreasonable delay that is prejudicial to creditors, 11 U.S.C. §1307(c)(1);
2. Debtor has failed to commence making timely payments under section 1326, 11 U.S.C. §1307(c)(4);
3. Debtor may not be eligible for relief under Chapter 13, U.S.C. §109(e) based on unsecured claims, or even for bankruptcy under 11 U.S.C. §109(h); and
4. Conversion to Chapter 7 is the better choice because it is the best of creditors and the estate.

Interested party, Kimberly J. Husted, the Chapter 7 Trustee when the case was first filed, filed a Joinder to Trustee's request on April 14, 2021. Dckt. 174. The Chapter 7 Trustee asserts administrative claims against the estate while serving as the Chapter 7 trustee from November 2, 2020 through January 5, 2021, when the case was converted to the present Chapter 13. Moreover, the Chapter 7 Trustee alleges that Debtor has departed from his the duties imposed by the Bankruptcy Code by among other things, undervaluing real estate listed on the schedules, failing to disclose the sale and moving forward with the sale without court authorization, and failing to turn over the real estate sale proceeds to the Chapter 13 trustee.

## **PREVIOUS CONVERSION**

Debtor initially filed this case under Chapter 7 on November 2, 2020, Dckt. 1. The case was converted to a Chapter 13 case on January 4, 2021. Dckt. 62. Debtor first proposed a plan on January 14, 2021, which was not confirmed.

On April 22, 2021 Debtor filed a Motion to Confirm Plan. Dckt. 181. The proposed Plan was filed on May 12, 2021. Dckt. 200.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on April 28, 2021. Dckt. 187. Debtor's Opposition is discussed below.

## **DISCUSSION**

### No Credit Counseling

Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;
- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

In the Reply Debtor states that a Credit Counseling Certificate would be filed but such certificate is not yet found on this case's docket as of the court's drafting of this pre-hearing disposition.

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

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

On April 1, 2021 Trustee filed a Trustee's Report on the Meeting of Creditors stating that both Debtor and Counsel appeared and the meeting has been concluded. Trustee's April 1, 2021 Docket Entry Statement.

#### Delay of Confirmation

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 12, 2021. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan. The Motion to Confirm the Plan was filed on April 22, 2021. Dckt. 181. The proposed Plan was not filed until May 12, 2021. Dckt. 200. In the Declaration filed in support of confirmation of this proposed plan, Debtor offers no explanation for the delay in setting a plan for confirmation. Dckt. 184.

#### Debtor's Ability to Fund a Plan

Through that Declaration, Debtor testifies under penalty of perjury, that he has a projected monthly income of \$7,686, and after accounting for expenses in the amount of \$4,325, there is \$3,361 for plan payments. *Id.*

Debtor filed his Amended Schedule I, filed April 14, 2021. On Amended Schedule I Debtor states under penalty of perjury having the following income:

Net Monthly Income From	
Landscaping Business.....	\$3,888.90
Rent for Mayer Road Property.....	\$1,500.00

This results in Debtor having gross, before self-employment and other taxes, \$5,388.90 in income.

The court notes that conspicuously absent from Amended Schedule I is the required Statement showing the gross receipts, ordinary and necessary business expenses, and the total monthly income for Debtor's business income of \$3,888.90 a month. Amended Schedule I, ¶ 8.a.; Dckt. 171 at 5.

On Amended Schedule J, Dckt. 171, Debtor states under penalty of perjury having expenses of (\$6,775.00) a month. These reasonable and necessary expenses include:

Mortgage Payment for Residence.....	(\$1,440.00)
Property Taxes For Residence.....	(\$ 197.00)
Homeowner's Insurance for Residence.....	(\$ 25.00)

This is \$300 a year for homeowner's insurance on a property listed on Amended Schedule A/B as a vacant lot on which Debtor has a trailer for a residence.

Home Maintenance Expense.....	(\$ 0.00)
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Which would be projected at \$0.00 for the five years

of the Chapter 13 Plan.

Medical and Dental Expense.....(\$ 0.00)

Indicating that Debtor has no out of pocket medical expenses during the five years of the Chapter 13 Plan.

Transportation Expense (Gas, Repairs, Maintenance, Registration).....(\$ 150.00)

On Amended Schedule A/B, Dckt. 172, Debtor lists owning seven vehicles, two of which are listed as being used for business purposes only. As listed below, in addition to owning these seven vehicles, Debtor finds it necessary and reasonable to lease a 2020 Range Rover for which the monthly lease payment is \$1,300, which appears to be just about equal to the mortgage on his residence property.

Income Taxes.....(\$1,200.00)

This does not indicate payment of Debtor's self-employment taxes or other taxes required to be paid by the self-employed.

Lease of 2020 Range Rover.....(\$1,300.00)

The lease of this one vehicle is 24% of the Debtor's net, before tax income.

Vehicle Insurance.....(\$ 900.00)

While stating that he has income of \$1,500 a month from the Mayer Road Property, Debtor has no expenses for property taxes, repairs, maintenance, property insurance, or landlord liability insurance.

Taken as truthful, accurate statements under penalty of perjury as to income and expenses, Debtor documents that he does not have any projected disposable income with which to fund a plan.

If Debtor's finances have changed since the case was filed, and income has increased or expenses decreased, Debtor should properly file Supplemental Schedules I and J under penalty of perjury stating the accurate post-petition finances of Debtor.

It is concerning to the court that Debtor first states under penalty of perjury on April 13, 2021 (the date the Amended Schedules I and J are executed under penalty of perjury) that his expenses exceed his income by (\$1,366.10) a month. Debtor then turns around and files a Chapter 13 Plan on May 13, 2021, subject to the certifications made pursuant to Federal Rule of Bankruptcy Procedure 9011, that purports to state that Debtor has a mere 30 days later an extra \$3,353.00 in projected disposable income to fund a plan. This is \$4,719.10 more than he stated he had on Amended Schedules I and J [\$3,353.00 proposed plan payment plus filling the (\$1,366.10) shortfall shown on Amended Schedule J] a mere thirty (30) days earlier.



## Review of Proposed Plan

On May 12, 2021, Debtor filed a Chapter 13 Plan. Dckt. 200. This Plan goes with the Motion to Confirm filed on April 22, 2021. The grounds stated with particularity in the Motion to Confirm (as required by Federal Rule of Bankruptcy Procedure 9013) consist of:

The Debtor proposes that the Amended Chapter 13 Plan filed herewith be approved as the Debtor's plan.

The Debtor is amending his plan after amending several of the schedules filed with his bankruptcy petition so that the plan will accurately provide as much as possible to pay his creditors.

The originally filed plan has not been approved or confirmed.

A true and correct copy of the plan is filed herewith and made a part hereof.

The above grounds, if all taken as true, are not sufficient to show compliance with 11 U.S.C. §§ 1322 and 1325 for confirmation of a plan. It is interesting to note that the Motion says that Debtor is filing his Amended Schedules so they will accurately state his finances, and those Amended Schedule show that Debtor has no projected disposable income to fund a plan.

## Declarations in Support of Motion to Confirm

The first witness to testify is counsel for Debtor. Declaration, Dckt. 183. In that Declaration, counsel for Debtor provides personal knowledge testimony, as required by Federal Rules of Evidence 601, 602 that:

- A. Counsel has personal knowledge that Debtor thought he would not be able to operate his landscaping business at a profit when the case was filed. Declaration, ¶ 1.
- B. However, many of Debtor's "accounts" "rehired him for 2021." *Id.*
- C. With many of Debtor's accounts rehiring Debtor for 2021, it became "apparent" that the business could continue and Debtor could repay a substantial amount of debt. *Id.*
- D. Counsel then states that due to the haste of both Debtor and Counsel to convert the case from Chapter 7 to Chapter 13, "numerous inaccuracies were made in the petition and the plan." *Id.*, ¶ 2.
- E. That Debtor "has however, carefully amended his schedules to accurately reflect all of this [sic] assets and debts." *Id.* ¶ 3.

Presumably, Debtor has carefully stated under penalty of perjury his income and expenses on Amended Schedules I and J.

- F. “The Amended Plan is proposed in good faith, accounts for all of the Debtor’s income, assets and debts, and should be confirmed to allow the Debtor to continue his business and pay as much as possible to his creditors.” *Id.* ¶ 5.

Reviewing the above, no basis is shown by Counsel for having personal knowledge of various facts, such as Debtor’s clients rehiring him, Debtor’s “thoughts” as to why Chapter 7 was proper, and the financial information to make it “apparent” that Debtor could profitably operate his business. Rather, these appear to be hearsay statements, or mere arguments disguised as evidence.

In concluding the Declaration, Counsel provides the court with his legal factual conclusion of good faith and argument that the Amended Plan should be confirmed. While framed as testimony, at best this appears to be oral argument.

The second Declaration is that of the Debtor himself. Declaration, Dckt. 184. In it, Debtor provides his personal knowledge, factual testimony, as required by Federal Rules of Evidence 601, 602 that includes:

- A. Debtor provides his professional, legal conclusion that “[t]he Amended Plan complies with the provisions of Chapter 13 and all other provisions of the Bankruptcy Code.” Declaration, ¶ 3; Dckt. 184.

No evidence is presented of Debtor having legal training or legal knowledge to provide such testimony under penalty of perjury.

- B. “All of those errors [to the Schedules] have been corrected in the amendments to the schedules that have been filed.” *Id.* ¶ 5.

Debtor states that the information on Amended Schedules I and J, which state that Debtor has no disposable income, is accurate.

- C. “7. The Plan as proposed is feasible in that I will be able to make the payments set forth in the Plan and to comply with the provisions of the Plan. My projected monthly income is \$7,686 and my expenses are \$4,325.00 leaving \$3,361.00: enough for me to afford the plan payments.” *Id.* ¶ 7.

While providing the court with his factual determination of income, expenses, and a projected disposable income, Debtor provides no evidence of anything other than what is stated on Amended Schedules I and J.

#### Failure to Timely Make Payments

11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. In addition to Debtor’s proposed Plan not being financially consistent with the financial information provided under penalty of perjury on Amended Schedules I and J, Debtor did not commence making plan payments and was delinquent in plan payments totaling (\$6,706.00) in February 2021 when the Motion to Dismiss was filed. At \$3,353.00 a month, with payments beginning in February 2021, Debtor would have to fund the plan with monthly income of \$13,412.00 for the February through May 2021 period.

Moreover, as previously stated by the court, Debtor's failure to turn in the proceeds from the sale of the Florida property to the Trustee is concerning. While Debtor has now turned these funds over to the Chapter 13 Trustee, until March 26, 2021, after the Trustee notified Debtor's counsel that the on-line real estate Zillow was reporting that the Florida property had already been sold. Debtor has provided a copy of the Escrow Closing Statement for the Sale of the Florida Property as Exhibit 1 in support of the Motion for Authorization to Sell that Property. Exhibit 1, Dckt. 162. That Closing Statement states that escrow closed and the monies were disbursed on February 16, 2021. *Id.* Thus, it appears that Debtor had the monies for approximately thirty-eight (38) days before turning them over to the Chapter 13 Trustee.

#### Over Unsecured Debt Limit

Congress provides in 11 U.S.C. § 109(e) for specific debt limits for an individual who can qualify for relief under Chapter 13.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, **noncontingent, liquidated, unsecured debts of less than \$419,275** and noncontingent, liquidated, secured debts of less than \$1,257,850 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,257,850 may be a debtor under chapter 13 of this title.

11 U.S.C. § 109(e) (emphasis added). The plain language of this section that was in effect when this case was filed states that the noncontingent, liquidated unsecured debts [not limiting it to nonpriority unsecured claims] must be less than \$419,275.00. The term "Debt" is defined in 11 U.S.C. § 101(12) to be "liability on a claim." "Claim" is defined in 11 U.S.C. § 1010(5) to be any right to payment.

As held by the Ninth Circuit, eligibility under 11 U.S.C. § 109(e) is determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 978 (9th Cir. 2001); *see also Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999).

The court turns to the various Schedules E/F, which is titled "Schedule E/F: **Creditors Who Have Unsecured Claims**" (emphasis added), in which Debtor states under penalty of perjury his creditors with unsecured claims:

- A. Original Schedule E/F filed November 2, 2020; Dckt. 1 at 22-35.
  - 1. Priority Unsecured Claims.....(\$234,796.00)
  - 2. General Unsecured Claims.....(\$445,649.00)
    - a. Total Unsecured Claims.....(\$680,445.00)
- B. Schedule E/F filed January 14, 2021; Dckt. 86 at 15-27

1. Priority Unsecured Claims.....(\$236,564.00)
  2. General Unsecured Claims.....(\$399,409.66)
    - a. Total Unsecured Claims.....(\$635,973.00)
- C. Amended Schedule E/F filed April 14, 2021; Dckt. 172 at 17-28.
1. Priority Unsecured Claims.....(\$236,564.00)
  2. General Unsecured Claims.....(\$132,770.30)
    - a. Total Unsecured Claims.....(\$369,334.30)

While professing to have made mistakes, Debtor has repeatedly given information on Schedules E/F under penalty of perjury that show Debtor does not qualify for relief under Chapter 13. In the latest permutation of Schedule E/F, Debtor gets the total unsecured claims number under the \$419,275.00 cap, but it does not appear clear that this is what Debtor's creditors with unsecured claims were as of the commencement of this case.

In looking at the original and subsequently filed amended schedules, and the proofs of claim being more closely to the amounts of the original schedules filed with the petition, the court finds that Debtor is over the debt limits required under 11 U.S.C. § 109(e). Thus, Debtor does not meet eligibility for relief as a Chapter 13 debtor.

Trustee filed a Reply to Debtor's Opposition on May 11, 2021. Dckt. 198. Trustee continues to assert that reconversion to Chapter 7 is in the best interest of the estate. Trustee again notes that amending the schedules does not change that Debtor does not meet the debt limit eligibility requirements pursuant to 11 U.S.C. 109(e) and Debtor failed to turn over proceeds in a timely manner. Moreover, Debtor's amended Schedules I and J indicate that Debtor has a negative income and thus Debtor has no post-filing funds to pay his unsecured debts contrary to what Debtor states in the Opposition. Lastly, Trustee is uncertain that Debtor is "performing well-intention actions."

The court concurs, conversion back to Chapter 7 is in the best interests of the bankruptcy estate and creditors. Though given the opportunity to try and prosecute a Chapter 13 case, Debtor has demonstrated that he is incapable of doing so. Debtor has provided conflicting statements under penalty of perjury. Debtor's latest statement of income and expenses under penalty of perjury shows that he cannot fund a plan. Debtor has signed at least one declaration in which he provides his "legal opinion testimony." Though he was aware of being in bankruptcy and the need for the court to approve the sale of property, Debtor "allowed" an escrow to be closed and took \$50,000.00 of estate monies. Then, he did not turn it over to the Chapter 13 Trustee until that Trustee notified Debtor's counsel that Zillow was reporting that the Florida Property had been sold. Debtor has demonstrated that he does not have the ability to fulfill the fiduciary duties and obligations to the bankruptcy estate of a debtor who is exercising the powers and duties of a trustee over property of the bankruptcy estate.

Based on the foregoing, cause exists to reconvert this case to a Chapter 7 case. The Motion to Reconvert is granted, and the case is converted to one pursuant to Chapter 7.

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

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

The Motion to Reconvert or 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 Reconvert is granted, and the case is converted to one under Chapter 7.

# FINAL RULINGS

27. [19-27000-E-13](#) **MAHMUT BULUT AND TAMARA HOJJAT-BULUT** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mikalah Liviakis** **4-21-21 [22]**

**Final Ruling:** No appearance at the May 19, 2021 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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Mahmut Kazim Bulut and Tamara Marie Hojjat-Bulut (“Debtor”), are delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor are \$2,400 delinquent in plan payments, which represents multiple months of the \$600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

28. [17-25904-E-13](#)      **BARBARA MYERS**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Chinonye Ugorji**      **4-19-21 [84]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Barbara Jean Myers (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,810 delinquent in plan payments, which represents multiple months of the \$1,817 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



**Final Ruling:** No appearance at the May 19, 2021 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 April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Claudia Maria Navarro’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on May 5, 2021, however, converting the case to a proceeding under Chapter 7. Dckt. 48. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on May 5, 2021. *McFadden*, 37 B.R. at 521.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied without prejudice as moot, the case having been converted to one under Chapter 7.

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 14, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, James Marven Hurley ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on May 12, 2021. Dckts. 93, 91. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 94. 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.

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Juan Rodriguez and Marguerite Rodriguez (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on April 20, 2021. Dckt. 115. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

##### **Delinquent**

Debtor are \$1,426.64 delinquent in plan payments, which represents one month of the \$1,432.56 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee filed a Reply on May 12, 2021 informing the court that Debtor has become current and requests the motion be denied.

Based on the foregoing, the Motion is denied.

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

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

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

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

32.	<a href="#"><u>20-25705</u></a> -E-13	DAVID NIETO HERNANDEZ Paul Bains	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-10-21 <a href="#"><u>19</u></a>
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**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on March 12, 2021. The court computes that 68 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on April 5, 2021.

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

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 May 12, 2021, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Carla T Galbraith (“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. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Sen Noi Xaysana (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,183.00 delinquent in plan payments, which represents multiple months of the \$412.00 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.

35. [18-26407-E-13](#)      **NICHOLE MORGAN**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Ronald Holland**      **4-19-21 [77]**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Nichole Cleveland Morgan (“Debtor”), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on May 13, 2021. Dckts. 84, 85. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 87. 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.

36. [17-21208-E-13](#)      **LOUIS BROWN**      **CONTINUED MOTION TO DISMISS**  
[DPC-7](#)      **Mary Ellen Terranella**      **CASE**  
1-27-21 [\[200\]](#)

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 27, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on June 16, 2021.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Louis Frank Brown (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 17, 2021. Dckt. 204. Debtor states they have been approved to refinance his mortgage and that the proceeds will be sufficient to pay of his Chapter 13 case. *Id.* Debtor requested a case payoff from the Chapter 13 Trustee on February 6, 2021 which will allow him to prepare the modified plan and motion to approve. Debtor hopes to have all the required information so that the motion may be filed on or before the motion to dismiss.

#### **DEBTOR’S STATUS REPORT**

Debtor filed a status report on February 25, 2021. Dckt. 206. Debtor has received the payoff estimate and has forwarded it to the lender. Debtor is waiting for the HUD-1 estimate from the lender that is necessary for the Motion to Obtain Credit. As there is an approved loan sufficient for payoff, Debtor requests the Court continue the matter until the next dismissals calendar to allow additional time to file the Motion to Obtain Credit and, if required, the Motion to Modify Plan.



## **DISCUSSION**

### **Delinquent**

Debtor is \$38,785.21 delinquent in plan payments, which represents multiple months of the \$3,822.93 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).

At the hearing counsel for the Debtor reported that confirmation was received yesterday that the loan has been approved, and the additional bankruptcy documents requested have been provided by counsel for Debtor.

The Trustee did not oppose the court continuing the hearing to allow Debtor and Debtor's counsel to continue in the diligent prosecution of this case.

### **Debtor's Motion to Approve Loan Modification**

Debtor filed a Motion to Approve Loan Modification on April 27, 2021. Dckt. 211. The Motion has been set for hearing on May 25, 2021 at 2:00 p.m.

### **May 19, 2021 Hearing**

The Debtor's hearing on the Motion to Incur Debt being set for May 25, 2021, and it appearing that the parties in interest are cooperating, the hearing on this Motion to Dismiss is continued to allow the parties to focus their resources on the Motion to Incur Debt.

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

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

The Motion to Dismiss filed by David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion is continued to **9:00 a.m. on June 16, 2021.**

**Final Ruling:** No appearance at the May 19, 2021 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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Armar L. Walker and Maricela N. Walker (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor are \$15,500.00 delinquent in plan payments, which represents multiple months of the \$5,700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

38. [20-21809-E-13](#) **BECKY HAYES** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Michael Hays** **4-21-21 [41]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Becky Marie Hayes (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,550.00 delinquent in plan payments, which represents multiple months of the \$310.00 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.

39.	<a href="#"><u>21-20310-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>TIESHA FISHER</b> <b>Jason Vogelpohl</b>	<b>MOTION TO DISMISS CASE</b> <b>3-24-21 [34]</b>
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**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on April 13, 2021, Dckt. 52; 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 Tiesha Fisher (“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. 52, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

40. [20-21211-E-13](#) **FELICIA HICKS** **CONTINUED MOTION TO DISMISS**  
[DPC-1](#) **Colby LaVelle** **CASE**  
**2-3-21 [43]**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 3, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**Pursuant to Order of this court (Dckt. 69), the hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 4, 2021.**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Felicia Lynn Hicks ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on February 17, 2021. Dckt. 47. Debtor lists several factors for her inability to make the monthly Chapter 13 plan payments: family illness and missed work for care; lost IHSS income; and furlough from primary employment. *Id.* at ¶ 2. Debtor intends to amend Schedules I and J to provide an accurate amount of disposable income. *Id.* at ¶ 4. Debtor intends to amend the plan to increase from 36 to 46 monthly payments. *Id.* at ¶ 5. Debtor adjustments will allow make-up of missed payments and completion of the Chapter 13 plan within the maximum 60 months. *Id.* at 2:23.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,150.00 delinquent in plan payments, which represents multiple months of the \$450.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for Debtor reported that the Plan and Motion were filed late on March 2, 2021. The Trustee did not oppose the request for a continuance while the Debtor prosecuted the Motion to Confirm.

41. [20-21313-E-13](#)      **TIFFANY MILLER**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mohammad Mokarram**      **4-21-21 [38]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tiffany Renee Miller (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,840.00 delinquent in plan payments, which represents multiple months of the \$2,590.00 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.

42.    [19-21015-E-13](#)      **CAVIN SMITH AND DIANA**      **MOTION TO DISMISS CASE**  
         [DPC-1](#)                      **AGUILAR**                      **4-19-21 [35]**  
                                 **Scott Hughes**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Cavin Wayne Smith and Diana Carolina Aguilar (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response on May 3, 2021. Dckt. 39. Debtor’s Counsel states having received information from Debtor that they are current after making two payments through TFS to become current.

## **DISCUSSION**

### **Delinquent**

Debtor are \$5,759.66 delinquent in plan payments, which represents multiple months of the \$2,253.22 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).

On May 11, 2021 Trustee filed a Reply indicating that Debtor is now current after two payments totaling \$8,012.88 were received. Dckt. 41.

Based on the foregoing, the Motion is denied.

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

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

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

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



**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, April Renell Bryant (“Debtor”), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on May 4, 2021. Dckts. 49, 44. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 46. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Eric Lawrence Fleming ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on April 20, 2021. Dckts. 48, 46. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 49. 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.

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 10, 2021. The court computes that 97 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: \$313.00 due on January 24, 2021.

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

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Nina Yvette Drake (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$7,158.01 delinquent in plan payments, which represents multiple months of the \$1,250.00 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).

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.

47. [19-25022-E-13](#) **EDUARDO MONTERROSA** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mary Ellen Terranella** **4-20-21 [75]**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Eduardo Alfredo Monterrosa (“Debtor”), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on May 13, 2021. Dckts. 89, 87. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 92. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

The court shall issue 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.

48. [19-25522-E-13](#)      **DAN MCKENZIE**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Richard Jare**      **4-20-21 [34]**

**Final Ruling:** No appearance at the May 19, 2021 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 May 12, 2021, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Dan Lee McKenzie (“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. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 8, 2021. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Robert Edward Peterson and Kathryn Martha Peterson (“Debtor”), are in material default under the Plan because the plan will exceed the sixty months stated in the plan terms.

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

Debtor filed a Modified Plan and Motion to Confirm on May 5, 2021. Dckts. 82, 80. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 83. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Anthony Bernard Boone ("Debtor"), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$7,900.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

51. [19-20924-E-13](#)      **KEVIN KENNEDY**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mikalah Liviakis**      **4-19-21 [37]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Kevin Anton Kennedy (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,970.00 delinquent in plan payments, which represents multiple months of the \$3,970.00 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.

52.	<a href="#"><u>18-25226-E-13</u></a> <a href="#"><u>DPC-3</u></a>	<b>RONALD GREGORY</b> <b>Justin Kuney</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>1-28-21 [51]</b>
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**Final Ruling:** No appearance at the March 3, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 28, 2021. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Ronald Lee Gregory (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on February 17, 2021. Dckt. 55. Debtor states he has made a \$200.00 payment since the filing of this motion. *Id.* at ¶ 3. Debtor expects to receive a social security payment on the date of this hearing that will be able to cure the deficiency, but seeks time to allow for payment to reach Trustee. *Id.* at ¶¶ 4,5. Debtor requests the court “conditionally deny” the motion, allowing until March 13, 2021 to bring account current; or allow until March 17, 2021 to file a modified plan and motion to confirm;

or continuance to allow payment to arrive at the Trustee's office; or continuance to seek a non-material modification extending it beyond 48 months; or continuance to file and serve a modified plan and motion to confirm. *Id.* at ¶ 5,6.

## **DISCUSSION**

### **Delinquent**

Debtor is \$725.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **TRUSTEE'S RESPONSE**

Trustee filed a Response on February 24, 2021, stating his belief that Debtor has good cause for more time, but mentions Debtor's alternative requests stated in Debtor's Opposition. Dckt. 58. Trustee is not opposed to continuation until the next dismissal calendar date, believed to be May 19, 2021, to allow for formal modification with notice to creditors. *Id.* at 2:2.

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on May 10, 2021. Dckts. 65, 63. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 66. 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.

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the May 19, 2021 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 Dismissal which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on April 28, 2021, Dckt. 32; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Jennifer Wooster Link (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by he 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. 32, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Virginia Ashley Rose Hall (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,600.00 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).

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.

55. [18-20730-E-13](#)      **ALICE HARRIS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Mikalah Liviakis**      **4-14-21 [20]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Alice Marie Harris (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,250.00 delinquent in plan payments, which represents multiple months of the \$850.00 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.

56. <a href="#"><u>19-20337-E-13</u></a> <b>SHAWN/CHRISANN</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#"><u>DPC-1</u></a>	<b>4-19-21 [21]</b>
	<b>MCSWEENEY</b>
	<b>Mikalah Liviakis</b>

**Final Ruling:** No appearance at the May 19, 2021 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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Shawn Allen McSweeney and Chrisann Lynn McSweeney (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor are \$8,400.00 delinquent in plan payments, which represents multiple months of the \$1,950.00 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.



**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 18, 2021. The court computes that 89 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 10, 2021.

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

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Richey Deanne Harrison (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$7,213.49 delinquent in plan payments, which represents multiple months of the \$3,023.63 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

59. [21-20042-E-13](#) **LUCIA SOLORIO**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-15-21 [79]**

**DEBTOR DISMISSED: 4/14/2021**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), creditors, and Chapter 13 Trustee as stated on the Certificate of Service on March 17, 2021. The court computes that 63 days’ notice has been provided.

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

<b>The Order to Show Cause is discharged as moot.</b>
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The court having dismissed this bankruptcy case by prior order filed on April 14, 2021 (Dckt. 88), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

DEBTOR DISMISSED: 4/14/2021

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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<p><b>The case having previously been dismissed, the Motion is dismissed as moot.</b></p>
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The case having previously been dismissed, the Motion is dismissed 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 Motion to Dismiss 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 Motion is dismissed as moot, the case having been dismissed.

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 20, 2021. The court computes that 87 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on February 16, 2021.

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

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Paul Singh and Parmjit Kaur Brah (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor are \$6,050.00 delinquent in plan payments, which represents multiple months of the \$1,100.00 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).

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.

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

**Final Ruling:** No appearance at the May 19, 2021 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on April 21, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jose Mari Padilla Pagtalunan and Jeannette Rojas Pagtalunan ("Debtor"), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor are \$23,500.16 delinquent in plan payments, which represents multiple months of the \$7,875.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

65. [19-26158-E-13](#)      **NAOMI DAVIS**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Michael Benavides**      **4-21-21 [49]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Naomi Davis (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,110.00 delinquent in plan payments, which represents multiple months of the \$1,622.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

66. [20-24660-E-13](#)      **FRANCISCO SOLORIO**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Steele Lanphier**      **3-24-21 [55]**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 24, 2021. By the court’s calculation, 56 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Francisco Javier Solorio (“Debtor”), has failed to file a plan and set it for confirmation after the proposed amended plan was denied on January 12, 2021.

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

Debtor filed an Amended Plan and Motion to Confirm on May 5, 2021. Dckts. 65, 61. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 63. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

67.	<a href="#"><u>19-20666</u></a> -E-13 <a href="#"><u>DPC-2</u></a>	<b>SHARONDA WHITE</b> <b>Richard Sturdevant</b>	<b>MOTION TO DISMISS CASE</b> <b>4-19-21 [43]</b>
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**Final Ruling:** No appearance at the May 19, 2021 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 April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<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, Sharonda Renita Layvette White (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,396.41 delinquent in plan payments, which represents multiple months of the \$1,896.90 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.

**Final Ruling:** No appearance at the May 19, 2021 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 April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Joseph Medina Raquiza (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$23,531.67 delinquent in plan payments, which represents multiple months of the \$4,630.42 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.

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed Ex Parte Motion to Dismiss the pending Motion on May 12, 2021, Dckt. 48; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Laura Hope Hilton (“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.

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Christopher Michael Modellas (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,800.00 delinquent in plan payments, which represents multiple months of the \$2,671.69 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.

71. [18-26977-E-13](#)      **ERIC TAYLOR**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Michael Moore**      **4-14-21 [22]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Eric Scott Taylor (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,160.00 delinquent in plan payments, which represents multiple months of the \$2,064.00 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.

72.     [19-27777-E-13](#)     **YVONNE RICHARDS**     **MOTION TO DISMISS CASE**  
         [DPC-3](#)             **Peter Macaluso**             **4-21-21 [89]**

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Yvonne Rose Richards (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,236.50 delinquent in plan payments, which represents multiple months of the \$3,190.35 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

**Final Ruling:** No appearance at the May 19, 2021 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 May 12, 2021, Dckt. 158; 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 Eduardo M. Ortega and Marie E. Ortega (“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. 158, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2021. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jose Luis Hernandez ("Debtor"), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on May 12, 2021. Dckts. 103, 100. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 102. 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.

**Final Ruling:** No appearance at the May 19, 2021 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 April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Rachelle Ann Stratton (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S RESPONSE**

On May 5, 2021 Debtor filed a Response stating non-opposition to Trustee’s motion. Dckt. 65.

## **DISCUSSION**

### **Delinquent**

Debtor is \$15,308.65 delinquent in plan payments, which represents multiple months of the \$3,827.73 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.

76. [19-23781-E-13](#)      **VERLIN JOHNSON**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Bonnie Baker**      **4-20-21 [82]**

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on June 16, 2021.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Verlin Johnson (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Martine Johnson, Debtor’s surviving Spouse, filed a Response on May 5, 2021. Dckt. 93. Debtor’s spouse, the proposed representative for this case, filed a Notice of Death and Motion to Approve Continued Administration of the Bankruptcy Case on April 13, 2021 and a Motion for Hardship Discharge on April 30, 2021. Debtor’s Spouse, as the proposed successor representative, requests the court continue the hearing on this Motion until after the Motion for Hardship is heard.

## DISCUSSION

### Delinquent

Debtor is \$9,623.68 delinquent in plan payments, which represents multiple months of the \$3,817.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee has filed a Statement of Non-Opposition to the request for the late Debtor's Spouse to be appointed as the successor representative and for the case to continue to be administered in this court.

The late Debtor's Spouse, who is the proposed successor representative, filed a Motion for Hardship Discharge on April 30, 2021. Dckt. 89. The Motion has been set for hearing for June 8, 2021 at 2:00 p.m.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 **9:00 a.m. on June 16, 2021.**

DEBTOR DISMISSED: 5/3/2021  
JOINT DEBTOR DISMISSED: 5/3/2021

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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<p><b>The case having previously been dismissed, the Motion is dismissed as moot.</b></p>
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The case having previously been dismissed, the Motion is dismissed 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 Motion to Dismiss 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 Motion is dismissed as moot, the case having been dismissed.



**Final Ruling:** No appearance at the May 19, 2021 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2021. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The hearing on the Motion to Dismiss is continued to 9:00 a.m. on August 4, 2021.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Demetris Denise Lawrence (“Debtor”), is delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 5, 2021. Dckt. 50. Debtor informs the court that she did not receive the notice regarding the instant motion and requests a continuance of 90 days in order to remit the amount of \$247.24 to complete the Chapter 13 plan.

Debtor filed a Declaration on May 6, 2021 testifying that due to some miscommunication with her counsel she was unaware that there was an additional amount due after she thought she had completed her plan payments in October 2020. She requests the continuance because she is currently on a “thin budget” and will take her some time to come up with the funds.

## **DISCUSSION**

### **Delinquent**

Debtor are \$625.00 delinquent in plan payments, which represents multiple months of the \$125.00 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).

Given the modest dollar amount at issue, the amount of the Plan payment, and Debtor’s response, the court continues the hearing on the Motion to Dismiss.

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 9:00 a.m. on August 4, 2021.

79.	<a href="#"><u>20-24484-E-13</u></a> <a href="#"><u>DPC-2</u></a>	<b>ARTURO COUPE</b> <b>Michael Hays</b>	<b>MOTION TO DISMISS CASE</b> <b>3-17-21 [68]</b>
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**Final Ruling:** No appearance at the May 19, 2021 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 March 17, 2021. By the court’s calculation, 63 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 the debtor, Arturo Bruce Coupe (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,015.62 delinquent in plan payments, which represents multiple months of the \$2,394.66 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Pending Plan**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 9, 2021. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The court shall issue 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.

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditor and Chapter 13 Trustee as stated on the Certificate of Service on February 11, 2021. The court computes that 96 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees in this case: \$26.00 due on January 26, 2021.

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

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

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

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

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

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

DEBTOR DISMISSED: 4/26/2021

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on April 24, 2021. 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 fees.

<b>The Order to Show Cause is discharged as moot.</b>
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The court having dismissed this bankruptcy case by prior order filed on April 26, 2021 (Dckt. 16), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 20, 2021. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss William Matthew Love’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on May 7, 2021, however, converting the case to a proceeding under Chapter 7. Dckt. 20. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on May 7, 2021. *McFadden*, 37 B.R. at 521.

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor’s Attorney, and Office of the United States Trustee on April 14, 2021. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Mohammad Mahmoud and Nejmah Mahmoud (“Debtor”), is delinquent in plan payments.

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

Debtor filed a Modified Plan and Motion to Confirm on April 19, 2021. Dckts. 53, 51. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 54. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the May 19, 2021 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 April 21, 2021. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tressa LaNiece Thompson (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,255.00 delinquent in plan payments, which represents multiple months of the \$685.00 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.