

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

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

**June 1, 2022 at 9:00 a.m.**

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1.    **21-23539-E-13      DEREK WOLF**  
      **DVW-1            Peter G. Macaluso**  
      **U.S. BANK, NATIONAL**  
      **ASSOCIATION VS.**

**CONTINUED MOTION FOR RELIEF**  
**FROM AUTOMATIC STAY**  
**10-19-21 [\[11\]](#)**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 19, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court continued the hearing, opposition and reply briefs were filed, and the final hearing set for December 14, 2021.

<b>The Motion for Relief is <span style="color:red">XXXXXXXXXXXX</span></b>
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U.S. Bank, N.A. as Legal Title Trustee for Truman 2016 SC6 Title Trust ("Movant" or "Creditor") seeks relief from the automatic stay with respect to Derek Wolf's ("Debtor") real property commonly known as 7995 Alta Vista Lane, Citrus Heights, California ("Property"). Movant has

provided the Declaration of Brian Gaske to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues on October 12, 2021, without any notice of filing of Debtor's fourth consecutive bankruptcy case, Movant conducted its foreclosure sale on the property. Motion, Dckt. 11. At the time of the foreclosure sale, Debtor was due 25 months worth of mortgage payments, with a total of (\$25,150.25) in payments past due. Declaration, Dckt. 19. Movant specifies that due to the three prior consecutive bankruptcies prior to this one—all of which were dismissed—the nature of these payments as post or pre petition is not clear.

Movant requests several types of relief in this case. First, the annulment of the stay to make the foreclosure sale valid. Second, to terminate the stay going forward. Third, that the court order pursuant to 11 U.S.C. § 362(d)(4) that the automatic stay in a future filed case in the next two years will not automatically go into effect.

As the Civil Minutes for this Motion document, this matter has been a long and winding trail of issues, points, and ongoing disagreement. During this process Debtor has obtained counsel, a Plan confirmed, a Plan defaulted, and a related dispute now to be adjudicated in an Objection to Claim over the amount of the debt and application of payments.

Credit for the length of these proceedings does not go solely to the Parties, but the court has contributed significantly. Part of this has focused on insuring that Debtor, first attempting to prosecute this case in pro se and now with counsel, was afforded not only the opportunity to present and have his rights with respect to this Motion properly adjudicated, but that he also understood the process and that he has been afforded such opportunity, what the outcome from this litigation.

As this Contested Matter developed, it appeared to the court that a core dispute Debtor has asserted over the amount of the claim and proper application of payments should be “easily determined” through a “simple spreadsheet” computing the claim and payments made since the 2015 loan modification.

### **Trustee's Non-Opposition**

Trustee initially filed a non-opposition to this motion on October 26, 2021 (Dckt. 21). Trustee non-opposition was based on Debtor, in *pro se*, not getting documents filed.

### **Summary Relief From Stay Proceeding**

As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at \*8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014). This was restated recently by the Bankruptcy Appellate Panel in *Harms v. Bank of N.Y. Mellon (In re Harms)*, 603 B.R. 19, 27 (B.A.P. 9th Cir. 2019), including:

Relief from stay proceedings are primarily procedural. *Veal v. Am. Home*

*Mortgage Serv., Inc. (In re Veal)*, 450 B.R. 897, 914 (9th Cir. BAP 2011). They typically determine whether the equities justify releasing the moving creditor from the legal effect of the automatic stay. *Id.* Because of the limited scope of inquiry, neither the movant's claim nor its security should be litigated in the relief from stay proceeding. *Id.* (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740-41 (9th Cir. 1985)); *see also Grella v. Salem Five Cent Sav. Bank*, 42 F.3d 26, 33 (1st Cir. 1994) ("We find that a hearing on a motion for relief from stay is merely a summary proceeding of limited effect. . . ."). "Given the limited nature of the relief, . . . the expedited hearing schedule § 362(e) provides, and because final adjudication of the parties' rights and liabilities is yet to occur, . . . a party seeking stay relief need only establish that it has a colorable claim . . . ." *In re Veal*, 450 B.R. at 914-15 (emphasis added) (citing *United States v. Gould (In re Gould)*, 401 B.R. 415, 425 n.14 (9th Cir. BAP 2009)).

Though the court has discussed, and prodded the parties to address, some substantive matters such as proper computation of the secured claim and document the computation of the claim through a "simple spreadsheet," those issues are not adjudicated in this Motion for Relief From the Stay.

## **REVIEW OF FILE**

Debtor commenced this case on October 12, 2021. On October 27, 2021, a chapter 13 Plan was filed by Debtor in *pro se*. Dckt. 24. The Plan provides for monthly payments by Debtor of \$1,500 for sixty (60) months. Plan, Nonstandard Provisions; Dckt. 24 at 7. Additionally, Debtor will pay the Plan off early "if awarded settlement from Social Security." *Id.*

The only claim provided for in the Debtor's *pro se* Plan was Movant's, for which Debtor is to pay \$500 a month toward the \$29,254.55 arrearage and \$1,016.32 for the post-petition monthly payment. These two payment total \$1,516.32, which is slightly more than the \$1,500 a month play payment.

As addressed in the prior Civil Minutes, there appeared to be some significant financial feasibility issues with such Plan. The court noted that on Schedule J filed by Debtor in *pro se*, it included the statement, "If Rushmore will finally be fair and recognize my Mod Package that they have on file." In retrospect, this appears to be a reference to the 2015 Loan Modification.

## **REQUESTED ANNULMENT OF STAY**

At the first hearing on this Motion Movant notified the court that the buyer at the foreclosure sale has terminated the contract in light of the circumstances, and Movant was no longer seeking to annul the stay.

## **JANUARY 25, 2022 HEARING**

Debtor's newly obtained counsel appeared at the January 25, 2022 hearing on this Motion. He reported the efforts being made in the prosecution of this case and now a Chapter 13 Plan set for hearing in March 2022. Counsel also discussed his work with the Debtor to insure that Debtor understood that this case, in light of the many prior cases filed by Debtor in *pro se* that have been dismissed, is his final "fish or cut bait moment."

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Debtor's counsel also noted that if the Debtor were to sell the residence now, he would have to repay the grant received, it not being forgiven for nine more years. The court projects that the recoverable equity for Debtor would be lower than previously appearing, but could still be \$25,000+ cash.

From a review of the Supplemental Schedules I and J (Schedule I being incomplete and not including the gross income from Debtor's business and rental property), it appears that performing a plan for five years may be problematic.

However, the court notes that Debtor's counsel (Debtor previously having commenced this case in *pro se*) substituted in only two weeks prior to the hearing, this may well be part of the "more work to be done" by Counsel working with Debtor.

The Trustee confirmed that he now has the correct address for Movant and the payment of the amounts in the proposed plan, including past payments, will be made from the funds available to the Trustee.

The court continues this hearing to afford Debtor and his new counsel to "fish" (whether through curing the arrearage through the Plan or selling the Residence and obtaining \$25,000+ of exempt proceeds), rather than merely "cutting bait" and losing the house (and any exempt value) through a foreclosure.

### **MARCH 25, 2022 Hearing**

At the hearing on the Motion to Confirm, the Trustee reported that Debtor had not provided all of the information. After an extensive discussion in connection with the Motion to Confirm, the court concluded that for this case Debtor was at the "put up or shut up phase." He has promised to make certain payments, he is curing the default (a cashier's check in Debtor's counsel's hand) and has provided to make the payments electronically. Debtor should be allowed to show he can perform the plan in this case and not have it dismissed out from under him. The court granted the Motion to Confirm the Chapter 13 Plan, as it was amended at that hearing.

However, it also appears, as requested by counsel and the creditor seeking relief from the stay, that Debtor's performance bears close watching. Additionally, Debtor may benefit from knowing that there is a motion to dismiss and a motion for relief from stay pending, which he is fending off by performing the Plan.

### **SUPPLEMENTAL PLEADINGS FILED AND EVOLUTION OF ISSUES**

The Parties have filed various pleadings and supplemental pleadings as the court brought them through the trail of this Contested Matter. The court summarizes them as follows.

### **Debtor's Opposition**

On November 19, 2021, Debtor, in *pro se*, filed an opposition to the Motion for Relief. Debtor states they need more time to reconcile their mortgage with U.S. Bank. Additionally, Debtor states they are missing accounting for \$91,600.00 that Keep Your Homes California granted him in

2018. Debtor also disputes penalties and fees of Rushmore and provides exhibits.

### **Movant's Response**

Movant filed a reply in response to Debtor's opposition to the Motion for Relief from Automatic Stay on December 2, 2021. Dckt. 33. Movant states the Debtor has had the opportunity in his three prior bankruptcy filings to object to Movant's Proof of Claim or reconcile his mortgage, but has not done so.

'Also, Debtor asserts that payments were made to Movant in his prior case. In Debtor's Case No. 20-22852, no pre-petition arrears were paid to Movant. Movant also believes the Mortgage Assistance loan received which was sufficient to bring the Debtor's loan current as of February/March 2018, "was in the sum of only \$61,131.14, and NOT the entire \$91,700 as alleged by the Debtor, and that the Debtor's account was credited for that amount on or around March 20, 2018 by U.S. Bank, the then servicer of Debtor's loan. Movant has to date been unable to locate any evidence that the sum of \$91,700 was received from the Mortgage Assistance loan/program."

Movant concludes that Debtor has set forth no substantive Opposition to Movant's request to terminate and/or annul the stay and as such the Motion should be granted as requested. Movant requests (I) *in rem* relief from the automatic stay, as set forth in its Motion, to proceed to conduct another sale of the Property and (ii) a finding that Movant's previously conducted sale of the Property did not violate the automatic stay.

The Court has now continued this hearing several times. As event have transpired, Debtor has confirmed a plan, and then defaulted on the plan.

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

On December 29, 2021, Trustee David P. Cusick filed a status report stating Debtor is delinquent \$1,500.00 in Plan payments and Debtor has failed to provide verification of income, 2 years of tax returns, 6 months of profit and loss statements and 6 months of bank statements.

### **Movant's Supplemental Pleadings for January 11, 2022 Hearing**

For the January 11, 2022 hearing, Movant filed Supplemental Pleadings. Dckts. 43, 44. In the Supplemental Declaration, the testimony includes (identified by paragraph number in the Declaration):

5. Debtor states that he received a \$91,600.00 loan in approximately February 2018 from the California Help to Homeowner's Program.
6. A prior loan servicer was responsible for the loan that is the subject of this Motion at that time.
- 8., 9. Rushmore, the current loan servicer, has provided Debtor and the proposed counsel for Debtor with documents and records (including those from the period when the prior loan servicer was responsible for this loan), which include:

a. The sum of \$61,131.14 was received and applied to Debtor's loan in 2018.

b. Upon further review of the prior loan servicer's files, additional information has been provided Debtor and Debtor's proposed counsel showing that the \$91,700 was received in 2018 and applied to Debtor's loan. Exhibit A, Dckt. 44, is a printout of the loan history from the prior loan servicer's records (which unfortunately is not clearly set out in a set of tables, but consists of a lot of words and number squeezed on each page - with the court clearing noting that this is not the records of the current loan servicer, but what they received from the prior loan servicer.

9a. In the Declaration the obligation under the loan and application of the \$91,700 is stated as follows:

Principal Balance 1 <sup>st</sup> Lien	(\$170,465.08)		(\$36,400.00)	Deferred Principal 2 <sup>nd</sup> Lien
Application of March 20, 2018 \$97,700				
Due Date June 2015	\$7,292.61			
Due Date March 2016	\$1,620.58			
Due Date May 2016	\$1,639.91			
Due Date July 2016	\$4,904.70			
Due Date January 2017	\$4,904.70			
Due Date July 2017	\$4,465.50			
Due Date December 2017	\$4,465.50			
Due Date May 2018	\$256.35			
Due Date May 2018	\$1,019.00			
Due Date May 2018	\$61,131.14			
Total Monies Applied	\$91,699.99			

11. The \$91,700 was applied to the delinquent mortgage payments due for the months of June 1, 2015 through and including May 1, 2018.

In the Motion for Relief, Movant asserts that the arrearage at the time of the foreclosure sale was not less than \$25,150.24, which Movant states is for the period October 1, 2019 through October 1, 2021. Motion, ¶ 7; Dckt. 11.

**Supplemental Pleadings for  
May 10, 2022 Hearing**

On May 6, 2022, counsel for the Chapter 13 Trustee provided a Supplemental Declaration providing testimony concerning Debtor's performance under the confirmed Chapter 13 Plan. Dckt. 13. That testimony, identified by paragraph number in the Supplemental Declaration includes:

3. and 4. The Trustee received initial payments totaling \$1,500 and then payments in March and April 2022 totaling \$2,810.00, with a payment scheduled through TFS in the amount of \$1,100.00 which is anticipated to be received by May 11, 2022.
5. The Trustee computes Debtor to be delinquent \$3,069.00 in plan payments, with an additional payment of \$1,960.00 coming due on May 25, 2022.

The Trustee's counsel also notes that there is an Objection to Creditor's Claim pending, with a hearing set for June 28, 2022.

### **Supplemental Pleadings for June 1, 2022 Hearing**

On May 25, 2022, Movant filed the Declaration of Brian Gaske, an Assistant Vice President for Rushmore Loan Management Services, LLC, the loan servicer. Dckt. 107. With respect to the receipt and applicant of the Save Your Home California monies, he states (identified by paragraph number of the Declaration, with the court paraphrasing unless test is shown with "quotation marks"):

8. \$91,700.00 was received and applied to Debtor's loan in 2018, as identified on Exhibit 1 filed with the Declaration. Also, that Exhibit 1 states the application of payments received by Debtor after May 2018 until the filing of the current Bankruptcy Case.
9. The \$91,700.00 was received on March 20, 2018 and first applied to the payments due June 1, 2015 through April 1, 2018, a period of 35 months in an amount totaling \$29,283.04.
10. After the \$29,283.04 was applied as above, Debtor and the prior loan servicer subsequently (to April 1, 2018) agreed that the principal balance of the loan would be "recast."
- 10 (cont.). The "recasting" of the loan was to apply the remaining \$61,481.20 of the Save Your Home California monies to first reduce the principal, which when combined with the payments for June 1, 2015 through April 1, 2018, by \$90,764.24, and then "935.76 for "corporate advances."
11. After application of the Save Your Home California monies in March of 2018, the principal balance of the loan was reduced from (\$170,465.08( to (\$161,874.80). The court is directed to review Exhibit 1 to see how the application of the \$91,700.00 in March 2018 resulted in a principal reduction of \$8,590.28.

The Declaration directs the court to Exhibit 3 (Dckt. 106) for the Principal Reduction and Recast Agreement (HFA Modification Assistance). With respect a principal reduction and recasting, it's

provisions include (identified by paragraph number of this Agreement:

(2.) Debtor deposits \$61,141.14 with Creditor, which is to be applied to the “president balance due on principal.”

(2. cont.) This payment of \$61,141.14 is to be made as of the effective date of this Agreement.

(3.) Debtor agrees that the terms of the mortgage are modified as follows:

- ◆ (\$100,743.66) is to be paid, with interest, (the Interest Bearing Principal Balance) in monthly installments of \$325.29.
- ◆ The first \$325.29 payment is due May 1, 2018.
- ◆ The final payment will be due August 1, 2054.

Exhibit 1 (Dckt. 106) is a spreadsheet beginning with a March 2018 payment of \$91,700, and showing the application of the payment first to the monthly amounts June 1, 2015, with a starting principal balance of \$170,226.53 through April 1, 2018 with a principal balance of (\$161,874.80) (the monthly principal, interest, and escrow portion of each monthly payment shown).

#### Modification of Loan

Before looking the numbers on Exhibit 1, the court goes back to the 2014 Loan Modification to which the subsequent 2018 recast and Save Your Home California monies relate.

In POC 2-1 filed by Creditor Debtor’s 2015 Chapter 13 Case, 15-20683, there is attached a Document titled Home Affordable Modification Agreement (“Modification Agreement”). The provisions of the Loan Modification Agreement are summarized as follows:

- A. Dated August 4, 2014.
- B. The Modification Terms are stated in ¶ 3 of the Modification Agreement, and include (identified by the paragraph number in the Modification Agreement):
  - 1. The Loan is modified effective September 1, 2014. ¶ 3.
  - 2. The first payment due under the loan modification is due September 1, 2014. *Id.*
    - a. The maturity date is August 1, 2054. ¶ 3.A.
  - 3. Modified Principal Balance is (\$208,994.25) (“New Principal Balance”). ¶ 3.B.
  - 4. (\$36,400.00) of the New Principal Balance is deferred [Non-Interest



- Bearing Principal Balance”], with no interest or monthly payments. ¶ 3.C.
5. (\$172,594.25) is the “Interest Bearing Principal Balance” on which interest will accrue and payments will be made by Debtor. *Id.*
  6. The monthly payments and interest rates on the Interest Bearing Principal Balance are, ¶ 3.C.,:
    - a. For Years 1-5 of the Modified Loan
      - (1) Interest is 2%
      - (2) Principal and Interest Payment is \$522.66/month
      - (3) Escrow Payment is \$275.14 (subject to adjustment)
    - b. For Year 6 of the Modified Loan
      - (1) Interest is 3%
      - (2) Principal and Interest Payment is \$607.21/month
      - (3) Escrow Payment is as adjusted
    - c. For Year 7 of the Modified Loan
      - (1) Interest is 4%
      - (2) Principal and Interest Payment is \$607.21/month
      - (3) Escrow Payment is as adjusted
    - d. For Years 8-40 of the Modified Loan
      - (1) Interest is 4.125%
      - (2) Principal and Interest Payment is \$677.80/month
      - (3) Escrow Payment is as adjusted
  7. The Modified terms “superseded any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.” *Id.*
  8. If a default rate of interest is permitted in the Loan Documents, then in the event of a default, the interest due will be that provided in ¶ 3.C. of the Loan Modification. ¶ 3.F.

POC 2-1 filed by Creditor in the 2015 Chapter 13 Case is signed by John R. Callison, as the Authorized Agent for U.S. Bank National Association. POC 2-1, § 4, states that:

- A. Pre-Petition Arrearage as of the January 30, 2015 filing of Chapter 13 Case 15-20683 was (\$3,177.95).
- B. The Amount of the secured claim was (\$209,166.89).

C. The Interest Rate was currently 2.00%

Additionally, on the Mortgage Proof of Claim Attachment to POC 2-1 filed in the 2015 Chapter 13 Case it states that:

- A. The principal due on the claim was.....(\$171,888.07)
- B. The interest due as of the filing of the 2015 Case was.....(\$ 859.44)
- C. The Total Principal and Interest Due was.....(\$172,747.51)
- D. Pre-Petition Fees, Expenses, and Charges.....(\$ 1,582.35)

Exhibit 1 Application of Payments

The Spreadsheet begins March 20, 2018, with a principal balance of \$170,467. This appears consistent with the \$172,747.51 non-deferred, Interest Bearing Principal Balance stated in the Loan Modification Agreement effective September 1, 2015.

Receipt of \$91,700.00 is listed as received March 20, 2018. This is then applied first to the June 1, 2015 to April 1, 2018 monthly loan payments asserted to then have been in default. With the curing of the asserted defaults, the Interest Bearing Principal Balance is stated to be \$161,874.80.

After payment of the April 1, 2018 monthly payment, there is computed to be \$61,131.14 of the \$91,700.00 received on March 20, 2018 remaining. These monies are then applied to the April 1, 2018 Interest Bearing Principal Balance, reducing it to \$100,743.66. (There is also a referenced to the "2nd UPB 36,400.00," which the court interprets to be the non-interest bearing, deferred portion of the principal balance under the 2014 Loan Modification.)

This Spreadsheet then shows only the following amounts received and credited to the Interest Bearing Principal Balance:

10/12/2020	\$1,075.25
10/20/2020	\$ 150.00
11/12/2020	\$2,150.50
12/10/2020	\$1,075.25
4/13/2020	\$3,225.75
5/12/2021	\$2,150.50
7/15/2021	\$1,075.25

After application of this \$10,902.50 to principal, interest, and escrow payments during the period October 10, 2020 to August 2019, the principal balance is computed by Movant to be \$97,832.07

## **DEBTOR'S OBJECTION TO MOVANT'S PROOF OF CLAIM**

On May 2, 2022, Debtor filed an Objection to Claim filed by Movant. Dckt. 95. In the Objection it is alleged that the Proof of Claim must be reduced by a \$91,700.00 grant Debtor received and then adjusted for payments of \$10,752.50, which thereby reduces the current arrearage to \$0.00.

The Debtor's Analysis, Section IV of the Objection to Claim, begins with a "Balance" of (\$209,166.89) for the total claim, with a pre-petition arrearage of (\$3,177.95), when the 2015 bankruptcy case was filed. When one allows for the (36,400.00) non-interesting bearing Deferred Principal Balance, this would result in the Interest Bearing Principal Balance being (\$172,766.89) when the 2015 bankruptcy case was filed.

Debtor then tracks the proofs of claims filed by Creditor which states the total claim amount when the various cases were filed by Debtor, which are stated in Debtor's Analysis to be:

Case 15-20683.....January 30, 2015.....(\$209,166.89)

[Between these two dates Debtor lists \$91,699.99 as being paid on Creditor's claim.]

Case 20-21485.....March 1, 2020.....(\$153,169.92) [this shows a reduction of \$55,996.97 in the claim]

[Between these two date Debtor lists \$0.00 as being paid on Creditor's claim.]

Case 20-22852.....June 1, 2020.....(\$159,190.35)

[Between these two Dates Debtor lists \$10,752.50 being paid on Creditor's claim, citing to the Trustee's Final report in Case 20-22852. See 20-22853; Trustee's Final Report, p. 1, Dckt. 231.]

Case 21-23539.....October 1, 2021.....(\$164,860.13)

These payments identified by Debtor total \$102,452.49. Debtor asserts that this documents that the \$91,700.00 Keep You Home California monies were not properly applied.

Debtor further asserts that all of the \$91,700.00 Keep Your Home California monies should have been applied to arrearages, and therefore there should be no arrearage due Creditor.

Debtor further asserts that Creditor has applied the payments to an unauthorized \$11,457.44 for attorney's fees and costs, stating that they were "not authorized by this, or any other court."

The only payments made to Creditor are stated to be those that went through the Chapter 13 Trustee in Debtor's cases and the \$91,700.00.

## **CONFIRMATION OF DEBTOR'S PLAN**

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Debtor, with representation of counsel, filed his Motion to Amend Chapter 13 Plan on January 21, 2022. See Dckt. 56. As discussed in the court's tentative ruling for Debtor's Motion to Confirm, both Movant and the Chapter 13 Trustee have opposed Debtor's Motion on various grounds. See Dckt. 73 and 75.

The court issued an order confirming Debtor's First Amended Plan on April 8, 2022. See Dckt. 88.

#### **APRIL 26, 2022, HEARING ON MOTION FOR RELIEF**

Though the Amended Plan, which addresses prior arrearages, has been confirmed, Debtor is now in default for the March and April 2022 monthly plan payments. Debtor's counsel stated that there is a TFS payment scheduled for April 27, 2022, and he will delivered to the Chapter 13 Trustee a cashier's check for \$850, which will cure the March 2022 default.

Counsel for Movant noted that this hearing has been continued multiple times and Movant has allowed Debtor to prosecute the confirmation of the Amended Plan which was to address the pre and post-petition defaults. Unfortunately, new defaults have occurred. Movant's counsel directed the court to the history of multiple, non-successful Chapter 13 filing by Debtor in this court.

At the hearing Debtor was visibly distressed at the proceedings and his view that Movant is trying to take his property. He has previously argued that Movant will not enter into a loan modification with him. As the court noted, Debtor's counsel is effectively forcing a five year loan modification on Movant though the confirmed Amended Chapter 13 Plan. However, the Debtor must be able to perform the Chapter 13 Plan and make the modified loan payments.

In light of the Chapter 13 Trustee being able to make a distribution to Movant in the near future, the court again continues the hearing. This is to afford Debtor and Debtor's counsel to have the hard economic talk about what Debtor can fund, how it can be funded, and what Debtor may need to do to save his exempt equity value in the Property.

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As noted above, the court does not adjudicate claims objections or other substantive disputes in the context of a relief from stay motion. In these post-confirmation settings, the "cause" question focuses on whether Debtor is prosecuting his/her case – i.e. performing the Chapter 13 plan the debtor got confirmed.

The court has "strayed" into looking at the payments and the nature of the claims objection dispute for several reasons. One, to understand the magnitude of any underlying dispute. Second, and most importantly, to afford Debtor the full opportunity to not only understand the obligation and what the parties are asserting, but to make sure that Debtor understands that he and his counsel have their opportunity to present such issues to the court.

In looking at Debtor's Analysis of the payments and total claim, the court notes that he lists there being \$91,699.99 in payments to Creditor for the period June 1, 2015 through July 1, 2018.

On Creditor's Exhibit 1, for the period June 1, 2015 to April 1, 2018, states that \$30,568.85 was applied for the payments due during that period. Then, the remaining \$61,131.14 was applied to the outstanding Interest Bearing Principal Balance of (\$161,875) as of April 2018, reducing it to (\$100,743.66). In addition, there would be the Deferred Non-Interest Principal balance of (\$36,400.00), making the total claim as of April 2018 to be approximately (\$136,400.00).

Debtor then identifies an additional payments of \$10,752.50 being made after April 2018 through the commencement of this current bankruptcy case.

#### Proof of Claim 2-1 in Current Bankruptcy Case

The current bankruptcy case was filed on October 12, 2021, which is three years and seven months after April 2018. On Proof of Claim 2-1 in the current case, Creditor states the claim has grown to (\$164,860.13). Included in this amount are (\$14,994.93) in attorney's fees and other costs, and (\$9,628.24) in escrow deficiency and shortage. These total an additional (\$24,623.17) which is added to the claim.

If one subtracts out the (\$24,623.17), which Debtor may dispute, that leaves (\$140,236.83) for the total claim, which includes the (\$36,400.00) Deferred Non-Interest Bearing Principal Balance. Removing this amount from the claim would leave (\$103,836.83) as the Interest Bearing Principal Balance, including accrued interest.

Creditor computes the April 1, 2018 Interest Bearing Principal Balance to be (\$100,743.66) after applying the \$91,700.00 payment.

As discussed above, the interest rates during the April 2018 to October 2021 were 3% and 4%. Doing a rough average of 3.5% per year, the Interest Bearing Principal Balance of (\$100,743.66) would accrue simple interest of (\$3,526.03) a year. Extrapolating that over three years and seven months from April 2018 to the October 2021 filing of the current case, that would total (\$12,634.94) in interest.

If \$10,752.50 in payments were made during the fifteen months of Debtor's bankruptcy case 20-22852, then that would result in the obligation owing on the Interest Bearing Principal Balance increasing by (\$1,882.54), for a total of (\$103,626.20). When adding the Deferred Non-Interest Bearing Principal Balance of (\$36,400) to it, the total claim, excluding costs, fees, and expenses, would appear to be around, (\$140,026.20).

The court's approximation is a little less than the claim as stated by Creditor has claimed in Proof of Claim 2-1 in this case, which, including fees, costs and expenses, is stated to be (\$164,860.13). When (\$14,994.93) for fees, costs, and expenses are backed out, Creditor's claim for the Interest Bearing Principal Balance portion and the Deferred Non-Interest Bearing Balance portion total (\$149,865.20).

This additional (\$9,000.00) amount in Proof of Claim 2-1 over the court's estimate of principal and unpaid interest appears to be the Escrow Deficiency of (\$8,410.82) and Escrow Shortage of (\$1,217.42) listed in Proof of Claim 2-1.

Thus, it does not appear that the claim amount should be reduced further by the \$91,700.00 Keep Your Home California payment and the \$10,752.50 (a more than \$100,000 "adjustment"), but whether the costs, fees, and expenses of (\$14,994.93) should be included in the arrearage to be cured.

As stated above, the court is not making any findings or rulings on the amounts of the claim and any objection thereto, but looking at to help the court and parties clarify what issues may actually be in dispute.

### **Ruling on Motion for Relief**

Debtor's confirmed Chapter 13 Plan requires Debtor to make increased monthly plan payments of \$1,960.00 commencing with the February 2022 payment and each month thereafter during the term of the Plan. Order, Dckt. 88. Under the Plan, the arrearage claimed by Creditor is to be paid \$755.00 a month for fifth seven months (the plan not being fully funded for the first three months). If there is a bona fide dispute over the (\$14,994.92) in costs, fees, and expenses, those represent the tail end months of the Plan.

With respect to Debtor's performance of the Plan, at the hearing, **XXXXXXX**

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 for Relief from the Automatic Stay filed by Name of Movant ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are **XXXXXXXXXXXXXXXXXXXXXXX**

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 11, 2022. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

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

1. the debtor, AUSTIN JAMES PAUL MERRITT (“Debtor”), is delinquent in plan payments.
2. There is no current plan pending.

## DISCUSSION

### Delinquent

Debtor is \$8,963.29 delinquent in plan payments, which represents more than one month of the \$8,254.43 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).

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 21, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 4, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Brian Joseph Pace and Stephanie Kathleen Pace ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on May 19, 2022. Dckt. 26. Debtor states they will file a new Modified Chapter 13 Plan prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,585.42 delinquent in plan payments, which represents multiple months of the \$2,292.71 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.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 11, 2022. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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

1. the debtor, Susana Lopez ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to provide verification of her identity and proof of her social security number at the Meeting of Creditors, which is continued to June 9, 2022.
3. Debtor has failed to provide the Trustee a copy of their Federal Income Tax Return with attachments for the most recent pre-petition tax year.

## **DISCUSSION**

## **Delinquent**

Debtor is \$850.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Failure to Provide Social Security Number**

Debtor has not provided Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **Failure to Provide Tax Returns**

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

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 4, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Willie Jean Norman ("Debtor"), is delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 18, 2022. Dckt. 54. Debtor states they will file a modified plan prior to the June 1, 2022.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,220.00 delinquent in plan payments, which represents multiple months of the \$420.00 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.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 16, 2022. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

-----.

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

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

1. the debtor, Arsenio Nuque Bucad and Leonora Acenas Bucad ("Debtor"), has no plan pending.

## DISCUSSION

### Prior Plan Denied, No New Plan

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 17, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

7.     [18-27716-E-13](#)     **APRIL BRYANT**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **Gabriel E. Liberman**     **5-4-22 [64]**

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

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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 May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1.       the debtor, April Renell Bryant (“Debtor”), is delinquent in plan



payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on May 9, 2022. Dckt. 72. Debtor states the delinquency will be cured prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$416.00 delinquent in plan payments, which represents multiple months of the \$208.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

8.	<a href="#"><u>18-27716-E-13</u></a> <a href="#"><u>DPC-2</u></a>	APRIL BRYANT Gabriel E. Liberman	MOTION TO DISMISS CASE 5-4-22 <a href="#"><u>[68]</u></a>
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## DUPLICATE FILING

Appearing to be a duplicate filing from Dckt. 64, this duplicate filing is taken off calendar and the Matter will be heard as Dckt. 64, Docket Control No. DPC-2.

**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 December 22, 2021. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Matthew Kent Rubb ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

Debtor is \$7,200.00 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

## **Status of Case**

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

The court continues the hearing in light of reported disruption in Debtor's counsel's law office.

### **April 19, 2022 Hearing**

Neither party has filed a status report in anticipation of the hearing. At the hearing, counsel for the Trustee reported that Debtor is now delinquent \$9,500.00.

Though delinquent, Debtor has made some small payments, but the arrearage has been growing. The Trustee concurred in the request to continue the hearing in light of Debtor's counsel not being present at the hearing.

### **June 1, 2022 Hearing**

Nothing further has been filed by the Debtor nor the Trustee. This has been continued several times to allow Debtor to obtain replacement or interim counsel in light of their counsel's apparent temporary disability in his representation of Debtor.

Thus appears to be a case in which Debtor needs to "clear the slate" and start fresh in a new bankruptcy case.

At the hearing, ~~XXXXXXXXXX~~

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

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

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

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

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

-----

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 May 2, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtors, James David Oliver and Heather L. Oliver ("Debtor"), are delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 17, 2022. Dckt. 108. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtors are \$1,710.00 delinquent in plan payments, which represents multiple months of the \$570.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

11. [19-26637](#)-E-13      **MARGO SHUGART-YOUNG**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Pauldeep Bains**      **5-2-22 [53]**

**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 May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Margo Shugart-Young (“Debtor”), is delinquent in plan payments.

**DEBTOR’S RESPONSE**

Debtor filed a Response on May 18, 2022. Dckt. 57. Debtor states they will not receive increased income in month twenty-seven (27) as expected, and will therefore not be able to make the expected increased payments. Debtor states that they will file a modified plan to account for this change.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,292.00 delinquent in plan payments, which represents multiple months of the \$3,443.00 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.

-----

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 1, 2022. By the court’s calculation, 64 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 Bankruptcy Case is dismissed.**

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

1. the debtor, Marcus Alexander Woodfork and Sheri Anne Tomkins (“Debtor”), is delinquent in Plan payments. Trustee shows a total of \$68,600.00 is due, so Debtor is delinquent \$9,293.76. Debtor’s monthly payment is \$3,500.00, prior to the hearing another payment will come due. Thus Debtor will need to pay \$12,793.76, in order to bring this plan current by the date of the hearing.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on March 15, 2022. Dekt. 65. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,293.76 delinquent in plan payments, which represents multiple months of the \$3,500.00 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).

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

At the hearing Debtor's counsel reported that Debtor has cured the delinquency, but it appears that they are only a \$50 delinquency. The Trustee reports that the Debtor is still one full payment in default.

The Parties agreed to a continuance to allow the Debtor to further address the default.

### **Status of Delinquency**

Trustee has not provided a status report since the previous hearing indicating whether the default has been cured.

### **June 1, 2022 Hearing**

At the hearing, **XXXXXXXXXXXX**

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted and this Bankruptcy Case is dismissed.



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

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The Motion to Dismiss was served by the Clerk of the Court on Debtor (*pro se*), Chapter 13 Trustee, U.S. Trustee, Creditors, on May 11 and 12, 2022, as stated on the Certificate of Service. The court computes that 20 and 21 days' notice has been provided.

The court issued an Order Setting Hearing on the Motion to Dismiss to address dismissal and consequences of dismissal for the pending bankruptcy case.

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXX</span></b>
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Hsin-Shawn Cyndi Sheng ("Debtor") seeks dismissal of their Chapter 13 case on the grounds that they are "not quite ready to file yet." Dckt. 11. Although under 11 U.S.C. § 1308(b) a debtor has a right to dismiss their bankruptcy case, the court specially set this hearing to address court concerns.

## **DISCUSSION**

On May 5, 2022, Hsin-Shawn Cyndi Sheng commenced the current Chapter 13 bankruptcy case. Then, on May 9, 2022, Ms. Sheng filed an *Ex Parte* Motion to Dismiss this case stating, "I e-filed my bankruptcy on 5/5/22, Thursday and realized that I'm not quite ready to file yet. Please cancel my dismiss or cancel my filing. My Case #21152." Dckts. 11, 12 (it appearing to have been filed twice). Ms. Sheng is prosecuting this bankruptcy case without counsel, appearing in *pro se*.

Ms. Sheng has several other recent bankruptcy filings with this court. She commenced a Chapter 7 Bankruptcy Case (represented by counsel) in 2017 in which she was granted her discharge November 29, 2017. Case 17-25114. That case has not closed yet, the Trustee having filed the Trustee's Final Report on March 3, 2022, and no order thereon entered.

With the assistance of the same counsel, Ms. Sheng filed a Chapter 13 case on January 17, 2019, which case was subsequently dismissed on July 8, 2020. Case 19-20302.

Ms. Sheng, in *pro se*, commenced Chapter 13 Case 22-20284 on February 8, 2022, in this court. Case 22-20284 was dismissed on February 28, 2022, due to Ms. Sheng's failure to file Schedules, Statement of Financial Affairs, a Chapter 13 Plan, and related documents. 22-20284; Notice of Incomplete Filings and Intent to Dismiss, Order, Dckts. 3, 15.

If Ms. Sheng dismisses the current case, she will then have had two bankruptcy cases pending and dismissed for the period commencing February 28, 2022, forward. Congress provides in 11 U.S.C. § 362(c)(4)(A) that if a debtor had two prior cases pending and dismissed within one year of the filing of the current case before the court, then no automatic stay goes into effect in the current bankruptcy case. In such a situation, a debtor or other party in interest may seek to have the "automatic" stay imposed, but such requires a motion and diligent prosecution by the debtor or party in interest.

Here, if this case is dismissed, then the provisions of 11 U.S.C. § 362(c)(4)(A) would prevent the automatic stay from going into effect in any further cases filed by Ms. Sheng until after February 28, 2023. The court is not confident that Ms. Sheng realizes the significance of filing and dismissing bankruptcy cases.

At the hearing, **XXXXXXXXXXXX**

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

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

The Motion to Dismiss the Chapter 13 case filed by Hsin-Shawn Cyndi Sheng ("Debtor"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor on May 18, 2022 and Debtor's Attorney and Chapter 13 Trustee on May 17, 2022 as stated on the Certificate of Service. The court computes that 14 and 15 days', respectively, 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 May 9, 2022.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.

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

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

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

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

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

-----

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 13, 2022. An Amended Notice of Rescheduled Hearing was served by the Clerk of the Court on April 29, 2022. By the court's calculation, 33 days' notice was provided for the Rescheduled Hearing.

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

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

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

1. the debtor, Marshaun Keith Tate ("Debtor"), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,334.00 delinquent in plan payments, which represents multiple months of the \$975.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

16. [19-20360-E-13](#) **KENNETH JOHNSON** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Mark A. Wolff** **5-2-22 [85]**

**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 May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Kenneth W Johnson (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 18, 2022. Dckt. 89. Debtor states their income was

reduced for periods of time due to being called to active duty. Debtor has filed supplemental schedules I and J to show their anticipated income. Debtor states they will file a modified plan to address the delinquency and their reduced income.

## **DISCUSSION**

### **Delinquent**

Debtor is \$8,576.30 delinquent in plan payments, which represents multiple months of the \$4,211.30 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

Local Rule 9014-1(f)(1) Motion—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 May 2 , 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Leo Cabral ("Debtor"), is delinquent in plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on May 16, 2022. Dckt. 56. Debtor requests a continuance of 30 days to complete a loan modification for their mortgage. Debtor states it is premature to file a modified plan before the loan modification is complete.

## DISCUSSION

### Delinquent

Debtor is \$5,314.00 delinquent in plan payments, which represents multiple months of the \$1,354.00 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, Trustee ~~agreed/disagreed~~ to a thirty-day continuance. ~~XXXXXXXXXXXXXXXXXX~~

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

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18.	<a href="#"><u>22-20283</u></a> -E-13	CHARLENE OJASCASTRO Richard L. Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-16-22 [ <a href="#"><u>44</u></a> ]
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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 May 9, 2022.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.00.



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

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

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

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

# FINAL RULINGS

19. [19-24900-E-13](#)      STEPHEN TORRES      CONTINUED MOTION TO DISMISS  
[DPC-1](#)      Mikalah Liviakis      CASE  
4-4-22 [\[18\]](#)

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 4, 2022. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Stephen Mark Torres (“Debtor”), is delinquent in plan payments.

## DEBTOR’S RESPONSE

Debtor filed a Response on April 12, 2022. Dckt. 22. Debtor states the delinquency has been cured.

## DISCUSSION

### Delinquent

Debtor is \$1,179.00 delinquent in plan payments, which represents multiple months of the \$393.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## No Evidence For Factual Assertion

Unfortunately for Debtor, a promise that payment has been made is not evidence that resolves the Motion.

At the hearing, counsel for the Trustee reported that a substantial payment, but are still \$393, and their TFS account has been suspended (indicating defaulted payments).

In the court's review of this file, the Debtor reports making substantial stable monthly income. On Schedule I his gross employment income is \$8,333.00 a month. Dckt. 1 at 31. After withholding and insurance, Debtor's take-home pay is \$7,733 a month. *Id.* at 23.

There appears to be little reason for the Debtor defaulting on the modest \$393 a month payment. There appears little reason, after Debtor's first default in plan payments, he did not establish an automatic electronic funds transfer to TFS the day after his regular paycheck hits his bank account.

The Trustee, while expressing grave concerns over the Debtor's continuing defaults and getting his TFS account suspended, agreed to a short continuance to allow Debtor a final chance to address these defaults.

## Trustee's Supplemental *Ex Parte* Request to Dismiss

The Chapter 13 Trustee having filed an *Ex Parte* Motion to Dismiss the pending Motion on May 25, 2022, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Debtor; the *Ex Parte* Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, 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 June 1, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on May 25, 2022, Dckt. 115; 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 Dennis Samuel Cobb and Robin Karen Cobb (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 115, 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 June 1, 2022 hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 4, 2022. By the court’s calculation, 31 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 dismissed without prejudice, and the bankruptcy case shall proceed in this court.**

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

1. the debtor, LaToya Kentrice Carter (“Debtor”), is delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on April 20, 2022. Dckt. 70. Debtor states the delinquency will be cured prior to the hearing date.

#### **DISCUSSION**

## **Delinquent**

Debtor is \$2,979.18 delinquent in plan payments, which represents multiple months of the \$1,733.23 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.

This Bankruptcy Case was commenced on March 23, 2017, and is nearing the end of the fifth and final year of the Plan. The Plan provides for a 100% dividend for creditors with general unsecured claims. Plan, Dckt. 5.

At the hearing, counsel for the Trustee reported that Debtor is now 62 months in the case, and Debtor has scheduled a payment through TFS for 1/3 of the default amount which is owed.

In light of the age of this case and a small final payment that needs to be made, the Trustee agreed to a continuance to allow Debtor and counsel to move to the successful completion of the Plan.

## **Supplemental *Ex Parte* Document**

Trustee filed a Supplemental *Ex Parte* Document on May 20, 2022, stating Debtor is current in plan payments and requests the court dismiss this motion. Dckt. 75.

Trustee filing an *Ex Parte* Motion to Dismiss the pending Motion; 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 LaToya Kentrice Carter (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Delois Juanita Johnson (“Debtor”), delinquent \$3,973.04 in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$3,973.04 delinquent in plan payments, which represents multiple months of the \$1,729.72 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.

23. [20-23209-E-13](#)      **ANDREW/DIANE GARCIA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Harry D. Roth**      **5-2-22 [110]**

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

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



1. the debtor, Andrew Garcia and Diane Garcia (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,925.24 delinquent in plan payments, which represents multiple months of the \$2,106.12 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 June 1, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtor, Keith Thomas Snyder (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,940.00 delinquent in plan payments, which represents multiple months of the \$980.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



## DEBTOR'S RESPONSE

Debtor filed a Response on May 12, 2022. Dckt. 39. Debtor states the delinquency will be cured prior to the hearing date and they served the Plan and Motion to Confirm on all parties.

Debtor requests the court continue Trustee's Motion to June 14, 2022, the date of the Hearing on the Motion to Confirm Plan.

## DISCUSSION

### Delinquent

Debtor is \$1,590.00 delinquent in plan payments, which represents multiple months of the \$795.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The hearing on the Motion to Dismiss is continued to June 14, 2022 at 2:00 pm to be heard in conjunction with the Motion to Confirm (Docket Control No. CLH-2).

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to **2:00 pm on June 14, 2022.**

26.	<a href="#"><u>22-20515-E-13</u></a>	<b>JASMINA BROOKS</b> <b>Thomas L. Amberg</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>5-11-22 <a href="#"><u>[22]</u></a></b>
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**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney on May 13, 2022 and Chapter 13 Trustee as stated on the Certificate of Service on May 12, 2022. The court computes that 19 and 18 days', respectively, 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 May 6, 2022.

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

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

The court shall issue a order 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 June 1, 2022 hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Heather Neal Vaughn (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$2,673.00 delinquent in plan payments, which represents multiple months of the \$690.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

28.	<a href="#"><u>20-25519-E-13</u></a> <a href="#"><u>DPC-1</u></a>	ANDREW/RINA CARAGAN Mark Shmorgon	MOTION TO DISMISS CASE 4-13-22 <a href="#"><u>[21]</u></a>
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**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is denied without prejudice as moot.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Robert Edward Carnegie and Penelope Sue Carnegie’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on May 18, 2022, however, converting the case to a proceeding under Chapter 7. Dckt. 64. 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 18, 2022. *McFadden*, 37 B.R. at 521.



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

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

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

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

30. [21-22223-E-13](#)      **STEVEN WOLF**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mark Shmorgon**      **5-4-22 [19]**

**Final Ruling: No appearance at the June 1, 2022 Hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

## **FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on May 20, 2022. Dckts. 31, 33. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 34. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. the debtors, Oswaldo Cervantes Perez and Bianca Edith Cervantes (“Debtors”), are delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtors are \$5,760.00 delinquent in plan payments, which represents multiple months of the \$1,920.00 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.

32. [20-23738](#)-E-13      **KIMBERLY GORDON**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter G. Macaluso**      **5-4-22 [63]**

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 25, 2022, Dckt. 70; 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 Kimberly Marie Gordon (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 70, 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.

33. [19-23848-E-13](#)      **NICHOLAS BAKER**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mikalah R. Liviakis**      **5-2-22 [50]**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Nicholas Steven Baker (“Debtor”), is delinquent in plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$9,235.14 delinquent in plan payments, which represents multiple months of the \$3,078.38 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 June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Nicolas Ryan Machado (“Debtor”), is delinquent in plan payments.

## DISCUSSION

### Delinquent

Debtor is \$6,728.77 delinquent in plan payments, which represents multiple months of the \$2,157.31 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.

35. [20-24776-E-13](#) **FORREST GARDENS** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Mikalah R. Liviakis** **5-4-22 [56]**

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an *Ex Parte* Motion to Dismiss the pending Motion on May 25, 2022, Dckt. 63; 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 Forrest Sylvan Gardens (“Debtor”); the *Ex Parte* Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 63, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



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

36. [22-20583-E-13](#)      **LEE NEWTON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Nima S. Vokshori**      **5-2-22 [30]**

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 2, 2022. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Lee Ann Newton ("Debtor"), is delinquent in plan payments.
2. Debtor has failed to make adequate protection payments.
3. Debtor is a serial filer. Having filed four (4) prior chapter 13 bankruptcy cases since 2018.

## **DISCUSSION**

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

Debtor did not commence making plan payments and is \$2,300.00 delinquent in plan payments, which represents one month of the \$2,300.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

### **Default in Adequate Protection Payments**

Debtor has not remitted an adequate protection payment of \$1,302.19, as required by the court's April 14, 2022 order. Dckt. 29. Debtor is in material default under 11 U.S.C. § 1307(c)(6).

### **Serial Filer**

Trustee states Debtor has filed four (4) prior Chapter 13 cases. Trustee is extremely skeptical that any Plan will work. Trustee does not provide any law supporting why a serial filer's case should be dismissed.

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 June 1, 2022 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney on May 8, 2022, and Chapter 13 Trustee on May 7 as stated on the Certificate of Service. The court computes that 24 and 25 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on May 2, 2022.

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

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

The court shall issue a order 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 June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Kenneth Wayne Snowden (“Debtor”), is delinquent in plan payments.
2. Debtor has failed to file an new Plan.
3. Debtor has not filed amended Schedules to include debt for the non-filing spouse.

## DISCUSSION

### Delinquent

Debtor is \$2,000.00 delinquent in plan payments, which represents multiple months of the \$1,150.00 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).

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

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 18, 2022. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **No Amended Schedules**

Debtor has not provided amended schedules regarding the non-filing spouse's obligations. Although not a reason to dismiss the pending case, if Debtor does not provide these amended schedules, it may be reason to deny confirmation of a future plan.

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 June 1, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on May 25, 2022, Dckt. 33; 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 Shari Lynn Frazier (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, 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 June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 2, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice, the case having been converted to one under Chapter 7.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Sarah Kelly Webster’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on May 23, 2022, however, converting the case to a proceeding under Chapter 7. Dckt. 43. 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 23, 2022. *McFadden*, 37 B.R. at 521.

Under the facts of this case, dismissal of this Motion is proper to allow it to be prosecuted as one under Chapter 7.

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

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

The Motion to 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, this bankruptcy case having been converted to one under Chapter 7.

41. [20-20298-E-13](#) **SELENIA BRITTANY CHARLES** **MOTION TO DISMISS CASE**  
[DPC-4](#) **Richard Kwun** **5-4-22 [87]**

**Final Ruling:** No appearance at the June 1, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 4, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Selenia Brittany Michelle Charles (“Debtor”), is delinquent on plan payments.

## **DISCUSSION**

### **Delinquent**

Debtor is \$602.00 delinquent in plan payments, which represents multiple months of the \$151.00 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.