

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

August 14, 2024 at 9:00 a.m.

---

1. <a href="#">23-22217</a> -E-13 <a href="#">DPC-2</a>	WLODZIMIERZ LITWIN Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 5-28-24 [ <a href="#">105</a> ]
--	--------------------------------------	--

**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, parties requesting special notice, and Office of the United States Trustee on May 28, 2024. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is granted and this Bankruptcy Case is dismissed.</b>
--

**August 14, 2024 Hearing**

At the prior hearing held on July 10, counsel for the Debtor reported that settlement documents are being circulated that fully resolve the underlying dispute relating to the release of the debt.

A review of the Docket on August 11, 2024, reveals nothing new has been filed with the court.

A review of the Adversary Proceeding, 24-02042, which Debtor has represented is being settled discloses that there has been nothing filed in that Adversary Proceeding since July 4, 2024 (Plaintiff-Debtor's Status Conference Statement). The Civil Minutes for the July 10, 2024 Status Conference reviews many "challenges" with the Complaint (including grossly deficient service of the summons and Complaint) as filed by the Debtor, as Plaintiff, in the Adversary Proceeding. 24-02042; Dckt. 15.

While representing to the court that the release of the lien that is the target in the Adversary Proceeding is “forthcoming” (Opposition, ¶ 3; Dckt. 109), nothing has been filed or done by the Debtor in the prosecution of this Chapter 13 Case or the Adversary Proceeding.

The Trustee has established that cause exist for the dismissal of this Bankruptcy Case. The Debtor’s failure to provide the court with anything showing that the Adversary Proceeding is being prosecuted or settled, and failing to provide the court with nothing to show that this Bankruptcy Case is being prosecuted “supporting” the Trustee’s grounds for dismissal, the Motion is granted and this Bankruptcy Case is dismissed.

## **REVIEW OF THE MOTION**

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

1. The debtor, Wlodzimierz J. Litwin (“Debtor”), has failed to file an amended Plan and set for confirmation after this court sustained Trustee’s Objection to the prior Plan on March 12, 2024. Mot. 1:24-26, Docket 105.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 107.

## **DEBTOR’S RESPONSE**

Debtor filed a Response on June 25, 2024, requesting the Motion be denied. Docket 109. Debtor states the Plan is incumbent on Adversary Proceeding 24-02042, which is pending a status conference on July 10, 2024, and pursuant to discussions with defendant’s counsel, that the required release of lien is forthcoming. *Id.* at 1:25-2:1.

## **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 12, 2024. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. However, Debtor indicates that a feasible Plan can now be presented with the conclusion of the related Adversary Proceeding 24-02042.

This Bankruptcy Case was filed on July 5, 2023. Now, more than one year after it was filed, Debtor states that \$1,500.00 has been paid to the Chapter 13 Trustee and that no plan may be prosecuted until Debtor completes the litigation in Adversary Proceeding 24-02042. Debtor offers no testimony in opposition, with the forgoing presented as argument by his counsel.

Adversary Proceeding 24-02042 was commenced by Debtor on May 1, 2024, which was ten (10) months after this Chapter 13 Case was filed. The Complaint alleges that Bank of America, N.A. released Debtor from the obligation that was secured by his Property as of September 27, 2019. Debtor asserts that the Defendants in the Adversary Proceeding are attempting to enforce the debt from which Debtor was released by Bank of America. 24-02042; Complaint, Dckt. 1. Defendants have asserted that Bank of America did not release the debt, and cite to irregularities in the communication which states that the debt will be released. Opp. to Mtn. to Confirm; Dckt. 87.

The Complaint seeks to quiet title to the real property commonly know as 3704 Larkspur Lane, Cameron Park, California.

No answer has been filed to the Complaint in the Adversary Proceeding. Plaintiff-Debtor's counsel states in the Status Report that "Defendants" request the court set discovery deadlines (request 30 days) and that the court set a time that it "may deem fit" for a default judgment "if Defendant fails to file an answer within the (10) days after this hearing." 24-2042; Status Report, Dckt. 9.

It is unclear from the Status Report whether it is the Defendants or the Plaintiff-Debtor requesting a 30 day discovery deadline. It is also unclear why the court is being asked to set a deadline for default judgment. The Federal Rules of Civil Procedure, as incorporated into the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules provide for the deadline for filing an answer, how the Plaintiff-Debtor requests the entry of a default, and how the Plaintiff-Debtor obtains a default judgment.

The Complaint names the following Defendants:

1. MEB Trust IV,
2. U.S. Bank Trust National Association,

After review of Proof of Claim 25-1, Plaintiff-Debtor may have intended the first defendant to be "U.S. Bank Trust National Association as trustee of the MEB Trust IV."

3. Bank of America, N.A., and
4. Specialized Loan Servicing, LLC.

24-2024; Complaint, Dckt. 1.

The Certificate of Service filed by the Plaintiff-Debtor does not document that service was made on MEB Trust IV (the trustee of the trust must be a named defendant and the trustee served), U.S. Bank Trust National Association, or Bank of America N.A. *Id.*; Dckt. 8.

Looking at the secured claims filed in the Debtor's Bankruptcy Case, the court notes the following for which the Larkspur Lane property is identified as the collateral:

1. Proof of Claim 25-1.
  - a. Creditor identified as: "MEB Loan Trust IV, U.S. Bank Trust National Association, not in its individual capacity but solely as trustee."

The court reads this to say that U.S. Bank National Trust Association is the trustee of the MEB Loan Trust IV, for which the trustee needs to be a named defendant and property served as required under Federal Rule of Bankruptcy Procedure 7004.

- b. Amount of Claim: (\$200,726.02).

2. Proof of Claim 13-1

- a. Creditor identified as “JPMorgan Chase Bank, National Association.
- b. Amount of Claim: (\$12,045.62).

The Internal Revenue Service and the California Franchise Tax Board have asserted tax liens, however, such do not appear to be the subject of the Adversary Proceeding.

Federal Rule of Bankruptcy Procedure 7004 requires that the defendant or its agent for service of process be served with the summons and complaint. Federal Rule of Bankruptcy Procedure 3007 provides for service for an objection to claim, which is a contested matter, and that an objection to claim may be served on the person designated to receive notices on the Proof of Claim and, if the creditor is an insured depository institution, service of the objection to claim must be made as required in Federal Rule of Bankruptcy Procedure 7004(h).

**Failure of Debtor to Provide  
For Litigation as Terms of the Chapter 13 Plan.**

The court sustained the Trustee’s Objection to Confirmation, with the court’s order denying confirmation entered on March 13, 2024. Dckt. 95. This is after the hearing on the Objection was continued from October 24, 2023, to December 5, 2023, to January 30, 2024, and then to March 12, 2024. Civ. Minutes; Dckt. 92.

As set forth in the above Civil Minutes, there were multiple grounds for sustaining the Objection to Confirmation after the multiple continuances.

The Plan proposed by Debtor (Dckt. 15) provided for monthly plan payments of only \$150.00 a month for thirty-six months. No provision is made in the Plan to use the automatic stay as a “preliminary injunction” to prevent a foreclosure while Debtor would diligently prosecute the quiet title litigation.

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.

-----

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, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~denied without prejudice as moot, and the case is converted to one under Chapter 7.~~**

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks to dismiss James David Oliver and Heather L. Oliver's ("Debtor") Chapter 13 case based on delinquency in Plan payments. The Trustee's grounds are that Debtor is in default in the amount of (\$1,690.00), with another Plan payment of (\$570.00) coming due prior to the hearing on this Motion. Opposition and Declaration; Dckts. 117, 119.

Debtor, represented by Counsel, filed a Pleading titled Opposition to Dismissal, combined with "Request for Conversion to Chapter 7." Dckt. 120. In the Opposition it is stated that Debtor is collecting documents to convert the case to Chapter 7. Thus, Debtor requests the court deny the Motion to Dismiss and then convert the case to one under Chapter 7 - notwithstanding Debtor stating that Debtor does not have documents necessary to convert the case to one under Chapter 7. Opposition; ¶ 1; Dckt. 120.

The Declaration of James Oliver is provided in support of the Motion. Dec.; Dckt. 121. In it James Oliver testifies that the ability to make the Plan payments have become difficult after his wife, the Co-Debtor in this Case, passed away. *Id.*; Dckt. 2.

The Notice of Death of the Co-Debtor Spouse was filed on May 28, 2021. Dckt. 64.

### **Conversion of Case by Chapter 13 Debtor**

Congress provides in 11 U.S.C. § 1307(a) provides that a debtor may convert a Chapter 13 case to one under Chapter 7 at any time, and such right to convert the case cannot be waived. Thus, the Debtor has had at his fingertips the power to convert this case to one under Chapter 7 prior to and after the July 15, 2024 filing of the Chapter 13 Trustee's Motion to Dismiss this case.

Debtor has not filed his Notice of Election to Convert the Case to one under Chapter 7, but merely has requested that the court order the conversion, rather than dismissal as requested by the Chapter 13 Trustee, to Chapter 7.

The Debtor having left it to the court to determine whether conversion of dismissal is in the best interests of creditors and bankruptcy estate (as required by 11 U.S.C. § 1307(c), the Code provisions that the present Motion has been brought to the court), the court concludes that dismissal is the proper relief to be granted.

As addressed in 8 Collier on Bankruptcy ¶ 1307.02 concerning the election by a debtor to convert a case to one under Chapter 13, it states:

Unlike section 1307(b), which states that the court shall dismiss a case upon request of the debtor, section 1307(a) provides that the debtor may convert a case to chapter 7. There is no need for the court to review the propriety of the conversion, since there are no preconditions on the right to convert similar to the limitation of the debtor's absolute right to dismiss to only those cases originally commenced under chapter 13. There is no bad faith exception to the right to convert. Once the debtor files a notice of conversion, the conversion is automatic and immediate; it cannot be delayed by the court.

The Debtor, not having filed a "simple" Notice of Election of Conversion to Case Under Chapter 13 (something that Debtor's very experienced bankruptcy counsel is well aware of and has done in other cases) in the 30 days since the filing of this Motion to Dismiss, appears to demonstrate that something amiss may be afoot in the prosecution of this Bankruptcy Case.

### **Dismissal of Case**

The Debtor has elected not to convert this Bankruptcy Case to one under Chapter 7. The Trustee's Motion states grounds and providing evidence for dismissal of this Case as being in the best interests of the creditors and estate. The Debtor's Opposition clearly requests that the court determine and order that the Case be converted.

The Motion is granted and the Bankruptcy Case is dismissed.

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

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

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

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

3. [24-22050-E-13](#)      **JOSE GARCIA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter Macaluso**      **7-8-24 [46]**

**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, parties requesting special notice, and Office of the United States Trustee on July 8, 2024. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

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

<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, Jose Antonio Garcia (“Debtor”), is delinquent \$4,050.00 in plan payments. Debtor never commenced making plan payments. Mot. 1:25-26, Docket 46.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 48.

**DEBTOR’S RESPONSE**

Debtor filed a Response on July 31, 2024. Docket 58. Debtor states, without filing any evidence in support, that he has been victim of a “horrible crime” that has delayed prosecution of the case.

This “Opposition” filed by Debtor’s counsel is little more than Debtor’s counsel directing the court to enter an order in favor of Debtor.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,050.00 delinquent in plan payments, which represents one month of the 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).

Here, Debtor argues a horrible crime has occurred. Debtor does not offer any evidence in support of this argument, nor does Debtor provide even a generalized description of what crime has occurred in this case that has caused the delinquency.

This is not Debtor’s only recently filed bankruptcy case. On October 2, 2023, Debtor with the assistance of his current counsel commenced Chapter 13 Case 23-23473 (Debtor’s “First CH 13 Case”). Debtor’s First CH 13 Case was dismissed on May 2, 2024. 23-23473; Dismissal Order, Dckt. 68. The Current Chapter 13 Case was filed by Debtor and his counsel on May 13, 2024 (eleven days after dismissal of Debtor’s First CH 13 Case).

The Debtor’s First CH 13 Case was dismissed due to monetary defaults, failure to provide tax returns, and failure of Debtor to file tax returns in 2019, 2020, 2021, and 2022. *Id.*; Civ. Minutes, Dckt. 67 at 2.

At the hearing, **XXXXXXX**

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

The court shall issue 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, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. 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).

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

~~The Chapter 13 Trustee, David Cusick ("Trustee"), indicating his intent to withdraw the Motion to Dismiss; 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 John David Qually and Marivi San Juan Qually ("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.~~

At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

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

1. The debtor, John David Qually and Marivi San Juan Qually ("Debtor"), are delinquent \$1,835.00 in plan payments. Debtor will need to have paid \$5,505.00 to become current by the hearing date. Mot. 1:19-22, Docket 82.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 38.

### DEBTOR'S RESPONSE

Debtor filed a Response, authenticated Exhibits, and a supporting Declaration on July 31, 2024. Dockets 40-42. Debtor testifies they became delinquent due to vehicle problems, but Debtor testifies they have since cured the delinquency. Decl. 1:22-2:4. Debtor submits authenticated Exhibits showing two of the payments having been posted on TFS. Docket 42.

## **DISCUSSION**

### **Delinquent**

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

In confirming whether Debtor has cured the delinquency, at the hearing, **XXXXXXX**

The delinquency having been cured, ~~the Motion is denied without prejudice.~~

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

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

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

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

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

-----

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, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. 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).

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

~~The Chapter 13 Trustee, David Cusick ("Trustee"), having indicated his intent to withdraw the Motion to Dismiss; 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 William R Doty ("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.~~

At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

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

1. The debtor, William R Doty ("Debtor"), is delinquent \$10,787.35 in plan payments. Debtor will need to have paid \$21,794.47 to become current by the hearing date. Mot. 1:19-22, Docket 76.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 78.

### DEBTOR'S RESPONSE

Debtor filed a Declaration in response on August 8, 2024. Docket 80. Debtor testifies he has cured the delinquency. Decl., Docket 80.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,787.35 delinquent in plan payments, which represents multiple months of the \$5,503.56 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In confirming Debtor has cured the delinquency, 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 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.

**APPEARANCES OF THE TWO DEBTORS  
AND COUNSEL FOR THE DEBTORS  
AT THE AUGUST 14, 2024 HEARING  
HAS BEEN ORDERED BY THE COURT**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 14, 2024. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is xxxxxxx.**

**August 14, 2024 Hearing**

Given the age of this case, the court continued the hearing to ensure that Debtors and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred. The court issued the following Order:

**IT IS FURTHER ORDERED** that Calvin Smith, Diana Aguilar, and Scott Hughes, Esq., counsel for the two Debtors, and each of them shall appear in person at the August 14, 2024 continued hearing.

The court orders the appearance in light of there not being a non-opposition to the Motion to Dismiss being filed and the Debtors' Plan now having reached in 60<sup>th</sup> month, the Debtors having substantially funded the Plan, and the Trustee's motion to

dismiss based on Plan payment defaults in April, May, and June 2024. The court wants to insure that Debtors and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred.

**IT IS FURTHER ORDERED** that if Debtors and Counsel do not oppose the Motion to Dismiss and intend to proceed without completing this Chapter 13 Plan and obtaining the relief that flows therefrom, a Statement of Non-Opposition to the dismissal for the case, which must be signed by each Debtor and Debtor's Counsel, may be filed on or before August 2, 2024, and if so timely filed no personal appearances by the two Debtors or Counsel is required for the August 14, 2024 hearing.

**IT IS FURTHER ORDERED** that the continuance of this hearing is without prejudice to the Chapter 13 Trustee requesting the court dismiss the Motion based upon curing of the default or Debtors and the Chapter 13 Trustee jointly requesting by *ex parte* motion a continuance of the August 14, 2024 hearing in light of Debtors working to complete the Plan and cure the defaults. If the Motion is dismissed or if the hearing is continued pursuant to order of the court based on the joint *ex parte* motion of the Parties, no in-person appearances at August 14, 2024 hearing or the continued hearing date (if any) by the two Debtors and their Counsel is required.

The Clerk of the Court shall serve this Order on each of the two Debtors, Calvin Smith and Diana Aguilar, Scott Hughes, Esq., counsel for the two Debtors, the Chapter 13 Trustee, and the U.S. Trustee.

Order, Docket 93.

A review of the Docket on August 9, 2024 reveals nothing new has been filed.

At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

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

1. The debtor, Cavin Wayne Smith and Diana Carolina Aguilar ("Debtor"), is delinquent \$4,600.00 in plan payments, but has paid a total of \$135,438.30 into the Plan to date. Debtor will need to pay \$9,188.50, in order to bring this plan current by the date of the hearing. Mot. 1:18-23, Docket 85.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 87.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,600.00 delinquent in plan payments, which represents multiple months of the \$2,294.25 plan payment. Before the hearing, another two plan payments 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, the Chapter 13 Trustee expressed concern over the dismissal in this case in light of it being near completion. The court concurs. The court orders the appearance in light of there not being a non-opposition to the Motion to Dismiss being filed and the Debtors' Plan now having reached in 60<sup>th</sup> month, the Debtors having substantially funded the Plan, and the Trustee's motion to dismiss based on Plan payment defaults in April, May, and June 2024. The court wants to insure that Debtors and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred.

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

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

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

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

**APPEARANCES OF THE DEBTOR  
AND COUNSEL FOR THE DEBTORS  
AT THE AUGUST 14, 2024 HEARING  
HAS BEEN ORDERED BY THE COURT**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 10, 2024. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is xxxxxxx.**

**August 14, 2024 Hearing**

Given the age of this case, the court continued the hearing to ensure that Debtors and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred. The court issued the following Order:

**IT IS FURTHER ORDERED** that Heidi Francis Adcock Arasomwan and Chinonye Ugorji, Esq., counsel for the Debtor, and each of them shall appear in person at the August 14, 2024 continued hearing.

The court orders the appearance in light of there not being a non-opposition to the Motion to Dismiss being filed and the Debtor's Plan now having reached almost the 60<sup>th</sup> month, the Debtor having not yet obtained authorization for the refinance or



loan modification to complete the Plan, and the Trustee's motion to dismiss based such failure of refinance or modification of the loan default. The court wants to insure that Debtor and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred.

**IT IS FURTHER ORDERED** that if Debtor and Counsel do not oppose the Motion to Dismiss and intend to proceed without completing this Chapter 13 Plan and obtaining the relief that flows therefrom, a Statement of Non-Opposition to the dismissal for the case, which must be signed by Debtor and Debtor's Counsel, may be filed on or before August 2, 2024, and if so timely filed no personal appearances by the Debtor or Counsel is required for the August 14, 2024 hearing.

**IT IS FURTHER ORDERED** that the continuance of this hearing is without prejudice to the Chapter 13 Trustee requesting the court dismiss the Motion based upon curing of the default or Debtor and the Chapter 13 Trustee jointly requesting by *ex parte* motion a continuance of the August 14, 2024 hearing in light of Debtor working to complete the Plan and cure the defaults. If the Motion is dismissed or if the hearing is continued pursuant to order of the court based on the joint *ex parte* motion of the Parties, no in-person appearances at August 14, 2024 hearing or the continued hearing date (if any) by the Debtor and Debtor's Counsel is required.

The Clerk of the Court shall serve this Order on the Heidi Francis Adcock Arasomwan and Chinonye Ugorji, Esq., counsel for the Debtor, the Chapter 13 Trustee, and the U.S. Trustee.

Order, Docket 102.

A review of the Docket on August 9, 2024 reveals nothing new has been filed.

At the hearing, **XXXXXXX**

### **REVIEW OF THE MOTION**

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

1. The debtor, Heidi Francis Adcock Arasomwan ("Debtor"), is current in plan payments having paid \$136,879.72 to date. Mot. 1:24-25, Docket 85.
2. However, Debtor is not in compliance with her Plan. Debtor stated in her nonstandard provisions of the Plan that she was in the process of obtaining a loan modification and would seek court approval once approved. Now in

month 48 of a 60 month Plan, there is no update on the loan modification. *Id.* at 1:26-2:9.

3. Plan is overextended. The Plan as proposed would take 249 months to complete. The overextension is due to Debtor needing to obtain the loan modification. *Id.* at 2:10-22.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 87.

## **DISCUSSION**

### **Plan Compliance and Overextended Plan**

Debtor's confirmed Chapter 13 Plan states she will make adequate protection payments of \$2,238 per month to creditor New Rez LLC d/b/a Shellpoint Mortgage Servicing ("Creditor") until debtor could obtain a loan modification to cure pre and postpetition arrears. Plan § 7.02.1-7.02.3, Docket 77. A review of the Docket shows no such agreement has been made, meaning the Plan is severely underfunded to cure arrears.

Without the loan modification being filed and granted, the Plan will take 249 months to complete. 11 U.S.C. § 1322(d)(1)(C) states, "the plan may not provide for payments over a period that is longer than 5 years." Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

At the hearing, the Chapter 13 Trustee expressed concern over the dismissal in this case in light of the terms of the Plan and it now being four years into the Plan term. The court concurs. The court orders the appearances in light of there not being a non-opposition to the Motion to Dismiss being filed and the Debtor's Plan now having reached in 60<sup>th</sup> month, the Debtor having not yet obtained authorization for the refinance or loan modification to complete the Plan, and the Trustee's motion to dismiss based such failure of refinance or modification of the loan default. The court wants to insure that Debtor and Counsel were aware of this pending dismissal and that there had not been a clerical error that occurred.

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

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

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

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

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

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

-----

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 July 26, 2024. By the court’s calculation, 19 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, Susan Lynn Vasques (“Debtor”), is delinquent \$7,186.68 in plan payments. Mot. 2:4-12, Docket 33.
2. Debtor failed to appear at the 341 Meeting. *Id.* at 1:26-2:3.
3. Debtor failed to filed business documents. *Id.* at 2:13-20.
4. Debtor failed to provide tax returns. *Id.* at 2:22-26.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 35.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,186.68 delinquent in plan payments, which represents roughly one month of the plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

### **Failure to File Documents Related to Business**

Debtor has failed to timely provide Trustee with business documents including:

- A. Two years of tax returns,
- B. Six months of profit and loss statements,
- C. Six months of bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **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, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, Andrew Caragan and Rina Caragan ("Debtor"), are delinquent \$1,106.00 in plan payments. Debtor will need to have paid \$2,212.00 to become current by the hearing date. Mot. 1:19-22, Docket 73.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 75.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and accompanying Declaration on June 10, 2024. Dockets 77, 78. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,106.00 delinquent in plan payments, which represents multiple months of the \$553 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor promises to make payments to cure the delinquency. At the hearing, xxxxxxx

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

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

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

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

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

10. <a href="#">20-21032-E-13</a>	<b>MARJORIE ALCANTARA</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-6</a>	<b>Richard Jare</b>	<b>7-12-24 [175]</b>

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on xxxx, 202x. By the court’s calculation, xx 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 <b>XXXXXXX</b>.</b>
---

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

1. The debtor, Marjorie Alcantara (“Debtor”), is delinquent \$2,400.00 in plan payments. Debtor will need to have paid \$3,600.00 to become current by the hearing date. Mot. 1:19-22, Docket 175.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 177.

## **DEBTOR'S RESPONSE**

Debtor filed a Response, authenticated Exhibits, and supporting Declarations on July 31, 2024. Dockets 180-183. Debtor testifies she has been making efforts to become current. Decl. 1:16-21, Docket 183. She fell behind in plan payments as she had to care for her sister in the Philippines who is undergoing cancer treatment. *Id.* at 1:22-26. However, Debtor is employed as a nurse and is making payments to catch up. *Id.*

The attached Exhibits show a payment of \$1,500 being made to go toward curing the delinquency. Docket 182.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,400.00 delinquent in plan payments, which represents multiple months of the \$1,200 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).

Here, Debtor is making efforts to cure the delinquency. 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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

-----

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, Parties requesting special notice, and Office of the United States Trustee on June 5, 2024. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

#### August 14, 2024 Hearing

The Trustee concurred with a request for a continuance to allow the Debtor to document her income status and file a modified Plan. A review of the Docket on August 9, 2024, reveals that no modified plan has been filed with the court.

The hearing on the dismissal Motion was continued based on the representation that the Debtor could now proceed with the diligent prosecution of this Bankruptcy Case.

The Debtor has not filed a Plan, motion to confirm, and supporting evidence, and no motion to confirm has been set for hearing.

No opposition has been filed to this Motion.



It appears that prosecution of this case, with the remaining months for a Plan, is not something that this Debtor can prosecute. It appears that Debtor needs a “clean slate,” with a full 60 months for a new Plan, in a new bankruptcy case to be filed after the dismissal of this Case.

Cause exists for the dismissal of this case. The Motion is granted and this Bankruptcy Case is dismissed.

### **REVIEW OF THE MOTION**

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

1. No Motion to Confirm Plan is pending following Objection to Confirmation, which was sustained December 12, 2023. Mot. 1:24-2:7, Docket 47.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 49.

### **DISCUSSION**

#### **No Pending Plan**

Debtor did not Move to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on December 12, 2023. A review of the docket shows that Debtor has not yet moved to confirm the Amended Plan that was filed on March 19, 2024. 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).

Counsel for Debtor reported that the Debtor had surgery, and has now recovered and is back at work, employed as a nurse. She is now able to take on some overtime shifts to provide additional cash flow to fund a modified Plan.

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

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

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

**IT IS ORDERED** that 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.

-----

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, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court's calculation, 33 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). Therefore, the defaults of the respondent and other parties in interest are entered.

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

~~The Chapter 13 Trustee, David Cusick ("Trustee"), has indicated his intent to withdraw the Motion to Dismiss; 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; 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.~~

At the hearing, **XXXXXXX**

### REVIEW OF THE MOTION

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

1. The debtor, Rudy Valentino Raya and April Michelle Raya ("Debtor"), are delinquent \$2,834.13 in plan payments. Debtor will need to have paid \$5,666.54 to become current by the hearing date. Mot. 1:19-22, Docket 51.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket53.

## **DISCUSSION**

### **Delinquent**

Debtor is \$2,834.13 delinquent in plan payments, which represents one month of the 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 denied without prejudice.

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

-----

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, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. 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). 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, Rose Lizola ("Debtor"), is delinquent \$4,550.00 in plan payments. Debtor will need to have paid \$13,650.00 to become current by the hearing date. Mot. 1:19-22, Docket 54.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 56.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,550.00 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This being an older case which the Debtor has funded with plan payments of \$85,800.00 and with only one payment delinquency at the time of this Motion being filed, the court set a hearing on this Motion notwithstanding no opposition having been filed.

At the hearing, **XXXXXXX**

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

The court shall issue 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.

14. [23-21250-E-13](#)      **ERIC/STEPHANIE HUTTON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Douglas Jacobs**      **6-11-24 [119]**

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

-----  
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, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. 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).

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

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

1. The debtor, Eric Eugene Hutton and Stephanie Michelle Hutton (“Debtor”), are delinquent \$10,162.28 in plan payments. Debtor will need to have paid \$18,016.70 to become current by the hearing date. Mot. 1:19-22, Docket 119.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 121.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and supporting Declaration on July 31, 2024. Dockets 123, 124. Debtor Eric Hutton has testified that his mother has agreed to help Debtor get caught up on their plan payments, and their economic issues have been otherwise resolved. Decl. 1:20-2:3, Docket 124.

## **DISCUSSION**

### **Delinquent**

Debtor is \$10,162.28 delinquent in plan payments, which represents multiple months of the \$3,927.21 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor has testified the delinquency will be cured. 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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

-----

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, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, Londell Voriceasante Earls ("Debtor"), is delinquent \$1,041.01 in plan payments. Debtor will need to have paid \$2,041.01 to become current by the hearing date. Mot. 1:19-22, Docket 22.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 24.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and supporting Declaration on July 30, 2024. Dockets 26, 27. Debtor testifies the delinquency will be cured prior to the hearing date. Decl. ¶ 2, Docket 27.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,041.01 delinquent in plan payments, which represents multiple months of the \$500 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor testifies the delinquency will be cured. At the hearing, **XXXXXXX**

~~The delinquency having been cured, the Motion 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.~~

16. <a href="#">18-27963-E-13</a>	<b>EUFEMIO/LIZA SEGUBAN</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-7</a>	<b>Peter Macaluso</b>	<b>6-10-24 [165]</b>

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, parties requesting special notice, and Office of the United States Trustee on July 10, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Eufemio Ordonia Seguban and Liza Frani Seguban (“Debtor”), is delinquent \$1,370 in plan payments. Debtor will need to have paid \$2,740 to become current by the hearing date. Mot. 1:19-22, Docket 165.



Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 167.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and accompanying Declaration on July 31, 2024. Dockets 169, 170. Debtor states the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,370 delinquent in plan payments, which represents one month of the 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).

In this case, Debtor has testified they will become current by the hearing date. At the hearing,

**XXXXXXX**

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

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

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

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

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

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 4, 2024. The court computes that 41 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 due on June 28, 2024.

**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 subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on June 11, 2024. 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).

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

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

1. The debtor, Jeremy Wygal ("Debtor"), is delinquent \$1,865.00 in plan payments. Debtor will need to have paid \$3,741.00 to become current by the hearing date. Mot. 1:19-22, Docket 75.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 77.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and accompanying Declaration on June 21, 2024. Dockets 80, 81. Debtor states he became delinquent due to unexpected moving expenses. Decl. ¶ 3, Docket 81. the delinquency will be cured prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,865.00 delinquent in plan payments, which represents multiple months of the \$938 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In this case, Debtor has testified they will become current by the hearing date. At the hearing,

XXXXXX

~~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.~~

19. [18-25370-E-13](#)  
[DPC-11](#)

JESSE ORTIZ  
Peter Macaluso

**MOTION TO DISMISS CASE**  
**7-15-24 [\[227\]](#)**

**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, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. 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, Jesse Soto Ortiz (“Debtor”), is delinquent \$16,278.99 in plan payments. Debtor will need to have paid \$24,419.79 to become current by the hearing date. Mot. 1:19-22, Docket 227.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 229.

## **DEBTOR’S RESPONSE**

Debtor filed a Response and accompanying Declaration on July 31, 2024. Dockets 231, 232. Debtor states the delinquency will be cured prior to the hearing date and reminds the court he has already paid over \$500,000 toward his Plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$16,278.99 delinquent in plan payments, which represents multiple months of the \$8,140.80 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).

In this case, Debtor has testified they will become current by the hearing date. 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 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. 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><del>The Motion to Dismiss is granted, and the case is dismissed.</del></b></p>
---

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

1. The debtor, John Russell Hernandez and Esther Marie Hernandez ("Debtor"), is delinquent \$3,835.00 in plan payments. Mot. 1:25-26, Docket 23.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 25.

## DEBTOR'S RESPONSE

Debtor filed a Response and Declaration in support on July 31, 2024. Dockets 27, 28. Debtor states that, due to employment issues, he will propose a Modified Plan to address the delinquency prior to the hearing date.

## DISCUSSION

### Delinquent

Debtor is \$3,835.00 delinquent in plan payments, which represents multiple months of the \$1,945.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the Docket on August 8, 2024, reveals no Modified Plan, supporting evidence, and Motion to Confirm has been filed. At the hearing, **XXXXXXX**

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

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

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

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

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

21. [21-21780-E-13](#)  
[DPC-2](#)

KEVIN HAYES  
Nikki Farris

**MOTION TO DISMISS CASE**  
**7-17-24 [47]**

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

-----  
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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. 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). Therefore, the defaults of the respondent and other parties in interest are entered.

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

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

1. The debtor, Kevin C Hayes (“Debtor”), is delinquent \$5,652.00 in plan payments. Debtor will need to have paid \$7,978.00 to become current by the hearing date. Mot. 1:19-22, Docket 47.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 49.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,652.00 delinquent in plan payments, which represents multiple months of the \$2,326.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Given the age of this case and no response filed by the Debtor, at the hearing, **XXXXXXX**

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

The court shall issue 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, parties requesting special notice, and Office of the United States Trustee on June 10, 2024. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, Desiree Renee Moreno ("Debtor"), is delinquent \$870.59 in plan payments. Debtor will need to have paid \$4,051.61 to become current by the hearing date. Mot. 1:19-22, Docket 49.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 51.

## DEBTOR'S RESPONSE

Debtor filed a Response, authenticated Exhibits, and support Declaration on July 31, 2024. Dockets 53-55. Debtor testified she should not be current on plan payments, having caught up as of July 9, 2024. Decl. 1:20-21, Docket 54. Debtor submits an Exhibit showing her payments having been made to become current. Docket 55.

## DISCUSSION

### Delinquent

Debtor is \$870.59 delinquent in plan payments, which represents less than a month of the \$1,590.51 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Here, Debtor has submitted evidence that the delinquency has been cured. 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 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 XXXXXXXX.

23. [24-22599-E-13](#)

**JAMES JOHNSON**  
**Candace Brooks**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-19-24 [33]**

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

-----  
The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 20, 2024. The court computes that 25 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79 due on July 15, 2024.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
---

The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.

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.

24. [23-20109-E-13](#)      **JONATHAN/LNIRA MARTINEZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mohammad Mokarram**      **6-13-24 [30]**

**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, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Jonathan Martinez and LNira Shiree Martinez (“Debtor”), is delinquent \$929.07 in plan payments. Debtor will need to have paid \$2,789.07 to become current by the hearing date. Mot. 1:19-22, Docket 30.

## **DEBTOR’S RESPONSE**

Debtor filed a Response and a supporting Declaration on July 30, 2024. Dockets 35, 36. Debtor testifies she became delinquent due to becoming sick, but she should have become current by submitting payments on July 31, 2024. Decl. 1:22-2:3, Docket 36.

## **DISCUSSION**

### **Delinquent**

Debtor is \$929.07 delinquent in plan payments, which represents one month of the plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor testifies she has submitted payments to become current. 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 to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [19-27920-E-13](#)  
[DPC-3](#)

**MICHAEL MULLINS**  
**Peter Macaluso**

**MOTION TO DISMISS CASE**  
**6-14-24 [94]**

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

-----  
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, parties requesting special notice, and Office of the United States Trustee on June 14, 2024. By the court’s calculation, 61 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><del>The Motion to Dismiss is granted, and the case is dismissed.</del></b>
--

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

1. The debtor, Michael Roy Mullins (“Debtor”), is delinquent \$5,267.93 in plan payments. Debtor will need to have paid \$11,374.57 to become current by the hearing date. Mot. 1:19-22, Docket 94.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 96.

## **DEBTOR’S RESPONSE**

Debtor filed a Response and accompanying Declaration on July 31, 2024. Dockets 98, 99. Debtor states the delinquency will be cured prior to the hearing date and reminds the court he has already paid over \$143,775.15 toward his Plan.

## **DISCUSSION**

### **Delinquent**

Debtor is \$5,267.93 delinquent in plan payments, which represents multiple months of the \$3,053.32 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).

In this case, Debtor has testified they will become current by the hearing date. 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 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, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

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

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

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

1. The debtor, James Jacob Burke ("Debtor"), is delinquent \$3,757.20 in plan payments. Debtor will need to have paid \$7,633.16 to become current by the hearing date. Mot. 1:19-22, Docket 66.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 68.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and Declaration in support on July 30, 2024. Dockets 70, 71. Debtor states the delinquency will be cured prior to the hearing date. Debtor informs the court his spouse has cashed out a portion of her retirement to cure the default. Decl. 2:4-9, Docket 71.

## **DISCUSSION**

### **Delinquent**

Debtor is \$3,757.20 delinquent in plan payments, which represents multiple months of the \$1,937.98 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Confirming the payments have been made to cure the delinquency, 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 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.

27. [22-20838-E-13](#)  
[DPC-2](#)

**MICHAEL/KIMBERLY**  
**OOSTERMAN**  
**Mikalah Liviakis**

**MOTION TO DISMISS CASE**  
**6-12-24 [41]**

**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, parties requesting special notice, and Office of the United States Trustee on June 12, 2024. By the court’s calculation, 63 days’ notice was provided. 28 days’ notice is required.

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

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

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

1. The debtor, Michael Edward Oosterman and Kimberly Leona Oosterman (“Debtor”), is delinquent \$4,757.51 in plan payments. Debtor will need to have paid \$18,783.67 to become current by the hearing date. Mot. 1:24-2:1, Docket 41.

2. Under the terms of the proposed Plan, Debtor was required to provide annual income tax refunds above \$2,000.00 to the Trustee to disburse to the general unsecured creditors. Trustee requested both tax returns for 2022 and 2023. Debtor only provided the return for 2022, not 2023, so Trustee is unable to determine if Debtor is in compliance. *Id.* at 2:2-9.

Trustee submitted the Declaration of trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 43.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,757.51 delinquent in plan payments, which represents less than a month of the plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, Debtor is not cooperating in sending Trustee the 2023 tax returns, meaning Trustee is unable to determine if the terms of the Plan are being complied with. In the Order confirming the Plan at Docket 17, the court ordered Debtor to contribute into the plan payment any amount of tax refund exceeding \$2,000. Docket 17.

This case being older with substantial sums having been paid, at the hearing, **XXXXXXX**

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

The court shall issue 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, parties requesting special notice, and Office of the United States Trustee on June 17, 2024. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is ~~XXXXXXX~~.**

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

1. The debtor, Steven Anthony Jimenez ("Debtor"), is delinquent \$922.00 in plan payments. Debtor will need to have paid \$1,142.00 to become current by the hearing date. Mot. 1:19-22, Docket 36.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 38.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and supporting Declaration on July 30, 2024. Dockets 40, 41. Debtor's attorney, Mr. Hays, states the current delinquency is due to Mr. Hays' mistake. Mr. Hays had his client's money in their client trust account and failed to tender the payment to Trustee. Reply 1:24-25, Docket 40. Mr. Hays informs the court Trustee should have received the money to become current y July 25, 2024. *Id.* at 2:1-4.

## **DISCUSSION**

### **Delinquent**

Debtor is \$922.00 delinquent in plan payments, which represents multiple months of the \$110 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

29. [22-23266-E-13](#)  
[DPC-1](#)

**WANDA BAETA**  
**Pauldeep Bains**

**MOTION TO DISMISS CASE**  
**6-17-24 [25]**

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

-----  
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, parties requesting special notice, and Office of the United States Trustee on June 17, 2024. By the court’s calculation, 58 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><del>The Motion to Dismiss is granted, and the case is dismissed.</del></b>
--

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

1. The debtor, Wanda Kay Baeta (“Debtor”), is delinquent \$1,200.00 in plan payments. Debtor will need to have paid \$3,600.00 to become current by the hearing date. Mot. 1:19-22, Docket 25.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket27.

## DEBTOR'S RESPONSE

Debtor filed a Response and two supporting Declarations on July 31, 2024. Dockets 32-34. Debtor's attorney testifies that he has been in touch with his client, Debtor, to cure the delinquency. Decl. 1:19-24, Docket 34. Debtor had been responding to communications at first, but then went silent later on during the communications. *Id.* at 2:1-3.

## DISCUSSION

### Delinquent

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

In determining whether the delinquency has been cured and Mr. Bains has been able to reach his client, 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 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, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court's calculation, 62 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, Oscar Quezada ("Debtor"), is delinquent \$1,650.00 in plan payments. Debtor will need to have paid \$4,950.00 to become current by the hearing date. Mot. 1:19-22, Docket 24.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 26.

## **DEBTOR'S RESPONSE**

Debtor filed a Response and supporting Declaration on July 31, 2024. Dockets 30, 31. Debtor states that he will propose a Modified Plan to address the delinquency prior to the hearing date.

## **DISCUSSION**

### **Delinquent**

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

A review of the Docket on August 8, 2024, reveals no Modified Plan, supporting evidence, and Motion to Confirm has been filed.

At the hearing, **XXXXXXX**

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

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

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

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

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

# FINAL RULINGS

31. [19-22506-E-13](#)  
[DPC-1](#)

SHAWN/SERINA JOHLE  
Gabriel Liberman

MOTION TO DISMISS CASE  
7-15-24 [32]

**Final Ruling:** No appearance at the August 14, 2024 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 July 30, 2024, Docket 36; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Shawn Leland Johle and Serina Michelle Johle (“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, Docket 36, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling: No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

**The 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 July 30, 2024, as Debtor had converted this case to one under Chapter 7, Docket 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Renee Ann Rosales (“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.

Debtor filed a Notice of Conversion on July 29, 2024, converting the case to a proceeding under Chapter 7. Docket 59. 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 July 29, 2024. *McFadden*, 37 B.R. at 521.

#### **ATTORNEY MACALUSO’S REQUESTED WITHDRAWAL**

Debtor’s attorney Mr. Macaluso filed a separate pleading entitled:

OPPOSITION OF DEBTOR'S COUNSEL TO MOTION TO DISMISS,  
NON-OPPOSITION TO CONVERSION & REQUEST TO BE RELIEVED AS  
COUNSEL FOR THE DEBTOR

Docket 65. Debtor attempts to move the court for permission to withdraw as attorney, stating the following:

1. Debtor and Counsel have reached a point where counsel is ineffective.
2. Debtor refuses to cooperate with counsel.
3. The Trustees facts, i.e. the debtor is behind \$840.00 in payments.
4. Debtor has responded directly to this court requesting conversion to chapter 7 to avoid paying counsel for conversion.
5. Debtor no longer desires this counsel to represent her.
6. Debtor's counsel is thus unable to properly represent the debtor, in this chapter.
7. Debtor's counsel has not been retained for a conversion to chapter 7.
8. The Court has the power to relieve counsel before conversion to chapter 7.

*Id.* at 1:23-2:10.

**APPLICABLE LAW**

District Court Rule 182(d) governs the withdrawal of counsel. LOCALBANKR. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. LOCAL R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

---

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

---

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 1994). An attorney



is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 559.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California (“Rules of Professional Conduct”). E.D. CAL. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. CAL. R. PROF’L CONDUCT 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client’s behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. CAL. R. PROF’L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

(4) the client by other conduct renders it unreasonably difficult for the lawyer to carry out the representation effectively;

CAL. R. PROF’L CONDUCT 1.16(b)(4).

However, Mr. Macaluso has not set this matter for a noticed hearing pursuant to Local Bankruptcy Rule 9014-1(f). Debtor and other interested parties must be given an opportunity to respond. Local Bankruptcy Rule 9014-1(a) states:

Parties shall file, serve, and set for hearing all contested matters, **including motions**, whether filed in the bankruptcy case or in an adversary proceeding, objections, applications, and **other matters for which a hearing is necessary** (hereafter referred to collectively as “motions”), in accordance with this Local Rule, any other applicable Local Rules, and the applicable provisions of Title 11 of the United States Code and the Federal Rules of Bankruptcy Procedure. Except as otherwise provided in LBR 3007-1, this Local Rule shall apply to objections to proofs of claim.

(emphasis added). As such, the Motion to Withdraw is not properly requested as a part of this Motion to Dismiss.

There being no noticed motion to withdraw having been filed by Debtor’s counsel, such relief requested in an opposition pleading 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 as moot, the case being converted to one under Chapter 7 when debtor Renee Ann Rosales filed her Notice of Conversion on July 29, 2024 at Docket 59.

**IT IS FURTHER ORDERED** that a request by Debtor’s counsel slipped into the Opposition to Dismissal of this Case, but consenting to Conversion to Chapter 7, is denied without prejudice, both the District Court Local Rules and the Local Bankruptcy Rules in the Eastern District of California requiring: (1) a separate motion and (2) that the separate motion be noticed for hearing, is denied without prejudice. See Local Bankruptcy Rule 2017-1

No other or additional relief is granted by the court.

33. <a href="#">21-23907</a> -E-13 <a href="#">DPC</a> -4	<b>MORGAN/FREDERICA REYES</b> <b>Jasmin Nguyen</b>	<b>MOTION TO DISMISS CASE</b> <b>7-15-24 [87]</b>
--	---	--

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick, (“Trustee”) filed this Motion based on Debtor’s delinquency in plan payments. Debtor is delinquent \$5,015.00 in plan payments. Mot. 1:19, Docket 87.

**FILING OF MODIFIED PLAN**

Debtor filed a Modified Plan and Motion to Confirm on July 15, 2024. Dckts. 96, 99. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 98. 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.

34. [20-24311-E-13](#)  
[DPC-3](#)

**JASON DIVEN**  
**Bonnie Baker**

**CONTINUED MOTION TO DISMISS**  
**CASE**  
**5-10-24 [145]**

**Final Ruling: No appearance at the August 14, 2024 Hearing is required.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, parties requesting special notice, and Office of the United States Trustee on May 10, 2024. By the court's calculation, 61 days' notice was provided. 28 days' notice is required.

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

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

#### **REVIEW OF MOTION**

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

1. The debtor, Jason Diven (“Debtor”), is delinquent \$4,413.10 in plan payments. Debtor will need to make two additional monthly payments of \$1,773.30 by the hearing date. Mot. 1:28-2:2, Docket 145.
2. The Plan is overextended. Trustee calculates the Plan will complete in 71 months due to unsecured claims being greater than Debtor anticipated. *Id.* at 2:10-14.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 147.

## **DISCUSSION**

### **Delinquent**

Debtor is \$4,413.10 delinquent in plan payments, which represents multiple months of the \$1,773.30 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Overextended Plan**

According to Trustee, the Plan will take 71 months to complete due to unsecured claims being greater than Debtor anticipated when the Plan was confirmed. 11 U.S.C. § 1322(d)(1)(C) states, “the plan may not provide for payments over a period that is longer than 5 years.” Failure to comply with the statutory length provided for a Plan is cause to sustain the objection.

Counsel for the Chapter 13 Trustee reported that the delinquency has been cured, but a modified plan must be filed to address the debt.

### **August 14, 2024 Hearing**

The court continued the hearing because Counsel for the Debtor reported that a modified plan and motion to confirm was being filed. The Trustee concurred with the request for a short continuance to allow the Motion and Plan to be filed and the Trustee to review it before the Trustee dismisses this Motion. On August 5, 2024, the Modified Plan and Motion to Confirm was filed.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 162, 160. 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

The Debtor moving forward with a Modified Plan and confirmation hearing set, 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.

35. <a href="#">24-20313-E-13</a>	<b>KEANNA ALMEDA</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	<b>Peter Macaluso</b>	<b>7-12-24 [82]</b>

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court’s calculation, 33 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, Keanna Gayle Almeda (“Debtor”), is delinquent \$1,000 in plan payments. Debtor will need to have paid \$1,500 to become current by the hearing date. Mot. 1:19-22, Docket 82.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 84.

## **DISCUSSION**

### **Delinquent**

Debtor is \$1,000 delinquent in plan payments, which represents multiple months of the \$1,500 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 August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. 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, Carla Sue Johnson (“Debtor”), is delinquent \$750.00 in plan payments. Debtor will need to have paid \$1,500.00 to become current by the hearing date. Mot. 1:19-22, Docket 27.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 29.

## **DISCUSSION**

### **Delinquent**

Debtor is \$750.00 delinquent in plan payments, which represents one month of the 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.

37. [19-25834-E-13](#)      **JESSE MACALAM**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mikalah Liviakis**      **7-15-24 [16]**

**Final Ruling:** No appearance at the August 14, 2024 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 August 7, 2024, Docket 23; 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 Jesse James Macalam (“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, Docket 23, 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.

38. [20-24837-E-13](#)  
[DPC-2](#)

MIRANDA WHEELER  
Peter Macaluso

MOTION TO DISMISS CASE  
7-12-24 [32]

**Final Ruling:** No appearance at the August 14, 2024 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 August 9, 2024, Docket 39; 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 Miranda Wheeler ("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, Docket 39, 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 August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on August 1, 2024. Docket 35.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Taiesha Keoni Anderson’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on August 1, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 35. 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 August 1, 2024. *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, Debtor having

converted this Case to one under Chapter 7, 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.

40. <a href="#">24-20849</a> -E-13  40 thru 41	<b>FLORENCIO/ANNIE DASALLA Chad Johnson</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER OF CLAIM 7-9-24 [38]</b>
--	---	---

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditor, and Chapter 13 Trustee as stated on the Certificate of Service on July 10, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on creditor Resurgent Receivables LLC's ("Creditor") failure to pay the required fees in this case: \$26 due on June 24, 2024.

<b>The Order to Show Cause is discharged.</b>
---

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

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditor, and Chapter 13 Trustee as stated on the Certificate of Service on July 10, 2024. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on creditor Resurgent Receivables LLC's ("Creditor") failure to pay the required fees in this case: \$26 due on June 24, 2024.

<b>The Order to Show Cause is discharged.</b>
---

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

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on July 30, 2024. Docket 51.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Bea Alene Speer’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on July 30, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 51. 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 July 30, 2024. *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.

43. [20-25051](#)-E-13  
[DPC-2](#)

**ROBERT LEWIS**  
**Muoi Chea**

**MOTION TO DISMISS CASE**  
**7-12-24 [42]**

**Final Ruling:** No appearance at the August 24, 2024 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 August 9, 2024, Docket 48; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Robert Albert Lewis (“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, Docket 48, 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 August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 27, 2024. By the court’s calculation, 48 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, Neeraj Sagar Bhardwaj and Stacy Brooke Milman (“Debtor”), never filed a Plan or commenced making plan payments. Mot. 1: 26-2:7, Docket 27.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 29.

## DISCUSSION

### Failed to Commence Plan Payments

Debtor did not commence making plan payments and never filed a Plan. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

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

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

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

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

45. <a href="#">23-21552-E-13</a> <a href="#">DPC-3</a>	<b>RONALD RATLIFF</b> <b>Rabin Pournazarian</b>	<b>MOTION TO DISMISS CASE</b> <b>7-9-24 [105]</b>
--	--	--

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 9, 2024. By the court’s calculation, 36 days’ notice was provided. 28 days’ notice is required.

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

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

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



1. The debtor, Ronald LeRoy Ratliff (“Debtor”), is delinquent \$12,174.31 in plan payments. Mot. 1:25-26, Docket 105.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 107.

## **DISCUSSION**

### **Delinquent**

Debtor is \$12,174.31 delinquent in plan payments, which represents multiple months of the \$5,754 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.

46. [22-22954-E-13](#)  
[DPC-2](#)

**JOHN/KRISTEN FIORICA**  
**Mark Shmorgon**

**MOTION TO DISMISS CASE**  
**6-11-24 [33]**

**Final Ruling:** No appearance at the August 14, 2024 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 July 30, 2024, Docket 40; 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 John Fiorica and Kristen Fiorica (“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, Docket 40, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

47. <a href="#">24-20654-E-13</a>	<b>MICHAEL BETTENCOURT</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	<b>Peter Cianchetta</b>	<b>6-26-24 [38]</b>

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), having filed an Ex Parte Motion to Dismiss the pending Motion on August 7, 2024, Docket 54; 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 Michael Joseph Bettencourt ("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, Docket 54, 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.

48. [24-21054-E-13](#)      **DAVID DURYEE/FELICA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **TORTORICI**      **7-29-24 [61]**  
                 **Bonnie Baker**

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.  
-----

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 July 29, 2024. By the court’s calculation, 16 days’ notice was provided. 14 days’ notice is required.

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

**The hearing on the Motion to Dismiss is continued to September 10, 2024 at 2:00 p.m.**

### **REVIEW OF THE MOTION**

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

1. The debtor, David Andrew Duryee and Felica Joseph Tortorici (“Debtor”), is delinquent \$10,500.00 in plan payments. Mot. 1:24-25, Docket 61.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 63.

## DISCUSSION

### Delinquent

Debtor is \$10,500.00 delinquent in plan payments, which represents multiple months of the \$6,000 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the August 6, 2024, hearing on the Motion to Confirm the Chapter 13 Plan, the court continued the hearing on the Motion to Confirm and this Motion to Dismiss to both be heard at 2:00 p.m. on September 9, 2024.

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 September 10, 2024 at 2:00 p.m.

49. [24-22256](#)-E-13

**SUKPREET BHATHAL**  
**Thomas Amberg**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-28-24 [\[14\]](#)**

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 29, 2024. The court computes that 46 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79 due on June 24, 2024.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
---

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

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

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

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

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

50. [24-22258-E-13](#)

**TYLER-JAMES MCCALL**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-29-24 [\[52\]](#)**

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 1, 2024. The court computes that 13 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 due on July 22, 2024.

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

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

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed his Notice of Conversion on August 8, 2024. Docket 60.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Alberto Jose Leiva’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on August 8, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 60. 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 August 8, 2024. *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.

52. [23-20164-E-13](#)      **NARENDRA KOLLA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mo Mokarram**      **7-15-24 [20]**

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 15, 2024. 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, Narendra Kolla (“Debtor”), is delinquent \$8,330.00 in plan payments. Debtor will need to have paid \$11,120.00 to become current by the hearing date. Mot. 1:19-22, Docket 20.

Trustee submitted the Declaration of Neil Enmark to authenticate the facts alleged in the Motion. Decl., Docket 22.

## DISCUSSION

## **Delinquent**

Debtor is \$8,330.00 delinquent in plan payments, which represents multiple months of the \$2,790.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 17, 2024. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on August 8, 2024. Docket 56.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Rebecca May Mann’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on August 8, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 56. 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 August 8, 2024. *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.

54. [24-20876](#)-E-13

**GUSTAVO ORTEGA**  
**Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
7-9-24 [[46](#)]

**DEBTOR DISMISSED: 07/12/24**

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 10, 2024. The court computes that 35 days’ notice has been provided.

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

<p><b>The Order to Show Cause is discharged as moot.</b></p>
--

The court having dismissed this bankruptcy case by prior order filed on July 12, 2024 (Docket 52), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court’s calculation, 33 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, Guy Allan Archbold (“Debtor”), is delinquent \$4,794.92 in plan payments. Mot. 1:23-24, Docket 44.
2. There is no Plan pending after the court sustained Trustee’s Objection to the previous Plan at Docket 40. Mot. 2:1-4, Docket 44.
3. Debtor failed to submit proof of his social security number and a copy of a government issued picture identification to the Trustee before the First Meeting of Creditors held on March 7, 2024, as required pursuant to FRBP 4002(b)(1)(A) and (B). *Id.* at 2:7-9.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 46.

**DISCUSSION**  
**Delinquent**

Debtor is \$4,794.92 delinquent in plan payments, which represents multiple months of the \$1,857.98 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **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 April 11, 2024. Docket 40. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **Failure to Authenticate Identification for the Meeting of Creditors**

Fed. R. Bankr. P. 4002(b)(1)(A) and (B) state:

(b) Individual Debtor's Duty To Provide Documentation.

(1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under §341:

(A) a picture identification issued by a governmental unit, or other personal identifying information that establishes the debtor's identity;  
and

(B) evidence of social-security number(s), or a written statement that such documentation does not exist.

Here, Debtor has not complied with this rule as Trustee informs the court he did not provide the required identification. That is cause for dismissal.

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 August 14, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 29, 2024. The court computes that 46 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on June 24, 2024.

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

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

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 30, 2024. The court computes that 15 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78 due on July 23, 2024.

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

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

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

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

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

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

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on July 12, 2024. By the court’s calculation, 33 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, Harvinder Jeet Singh and Kuldip Kaur (“Debtor”), are delinquent \$7,444.00 in plan payments. Mot. 1:24-2:4, Docket 63.
2. There is no Plan pending after the court sustained Trustee’s Objection to the previous Plan on May 7, 2024 at Docket 52. Mot. 2:5-9, Docket 63.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 65.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,444.00 delinquent in plan payments, which represents multiple months of the \$1,861.00 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 May 7, 2024. Docket 52. 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.

59. <a href="#">19-25988</a> -E-13	<b>YOLANDA CANAYA</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-2</a>	<b>Ronald Holland</b>	<b>7-17-24 [49]</b>

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Chapter 13 Trustee, David Cusick ("Trustee") having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 (Docket 53), **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**



60. [21-21690](#)-E-13  
[DPC](#)-3

RHODA MASON  
Yasha Rahimzadeh

MOTION TO DISMISS CASE  
7-17-24 [[63](#)]

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Chapter 13 Trustee, David Cusick (“Trustee”) having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 (Docket 53), **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

61. [24-20297](#)-E-13

LORELL LEAL  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-9-24 [[93](#)]

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor(*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on July 10, 2024. The court computes that 35 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$34 due on June 24, 2024.

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

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

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

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

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

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

62. [22-21200-E-13](#)  
[DPC-2](#)

AMADA ROGERS  
Mary Ellen Terranella

MOTION TO DISMISS CASE  
6-14-24 [\[34\]](#)

**Final Ruling:** No appearance at the August 14, 2024 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 August 9, 2024, Docket 42; 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 Amada Soledad Rogers (“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, Docket 42, 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 August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 21, 2024. By the court’s calculation, 54 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, Darrell Lamonte Keith and Elizabeth Tapia Keith (“Debtor”), have not filed an Amended Plan after the court denied confirmation of Debtor’s previously proposed Amended Plan on April 23, 2024 at Docket 53. Mot. 1:23-26, Docket 56.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 58.

## 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 April 23, 2024. Docket 53. 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.

**CASE CONVERTED: 07/21/24**

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 17, 2024. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed her Notice of Conversion on July 22, 2024. Docket 26.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Sheri Lou Khagura’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on July 22, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 26. 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 July 22, 2024. *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.

65. [22-20131-E-7](#)  
[DPC-1](#)

**THOMAS GREATHOUSE**  
**Mikalah Liviakis**

**MOTION TO DISMISS CASE**  
**6-13-24 [23]**

**CASE CONVERTED: 07/24/24**

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is denied without prejudice as moot, the Chapter 13 Case having been converted to one under Chapter 7 when Debtor filed his Notice of Conversion on July 24, 2024. Docket 30.**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Thomas Lynn Greathouse’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on July 24, 2024, however, converting the case to a proceeding under Chapter 7. Dckt. 30. 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 July 24, 2024. *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.

66. [23-23131-E-13](#)  
[DPC-2](#)

**DIANE GARCIA**  
**Harry Roth**

**MOTION TO DISMISS CASE**  
**6-25-24 [76]**

**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 25, 2024. By the court’s calculation, 50 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, Diane Garcia (“Debtor”), is delinquent \$7,065.87 in plan payments. Mot. 1:24-25, Docket 76.
2. Debtor has not filed an Amended Plan after the court denied confirmation of Debtor’s previously proposed Amended Plan on April 9, 2024 at Docket 73. Mot. 2:3-6, Docket 76.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 78.

## **DISCUSSION**

### **Delinquent**

Debtor is \$7,065.87 delinquent in plan payments, which represents multiple months of the \$2,700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

### **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 April 9, 2024. Docket 73. 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.



**Final Ruling:** No appearance at the August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 13, 2024. By the court’s calculation, 62 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, Mallory Rose Foster (“Debtor”), is delinquent \$5,404.00 in plan payments. Debtor will need to have paid \$10,808.00 to become current by the hearing date. Mot. 1:19-22, Docket 28.

Trustee submitted the Declaration of Kristen Koo to authenticate the facts alleged in the Motion. Decl., Docket 30.

## DISCUSSION

### Delinquent

Debtor is \$5,404.00 delinquent in plan payments, which represents multiple months of the \$2,702.00 plan payment. Before the hearing, another two plan payments 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.

68. <a href="#">22-21246-E-13</a>	<b>AERON WALLACE</b>	<b>MOTION TO DISMISS CASE</b>
<a href="#">DPC-3</a>	<b>Mary Ellen Terranella</b>	<b>6-14-24 [53]</b>

**Final Ruling:** No appearance at the August 14, 2024 Hearing is required.

-----

<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 7, 2024, Docket 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Aeron Lynnell Wallace (“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, Docket 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

69. [22-20057-E-13](#)  
[DPC-1](#)

**CHARLENE BLOUNT**  
Mary Ellen Terranella

**MOTION TO DISMISS CASE**  
6-13-24 [\[25\]](#)

**Final Ruling:** No appearance at the August 14, 2024 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 August 9, 2024, Docket 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 Charlene Elena Blount ("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, Docket 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 August 14, 2024 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, parties requesting special notice, and Office of the United States Trustee on June 21, 2024. By the court’s calculation, 54 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, Tammera Mae Ridge (“Debtor”), has not filed an Amended Plan after the court denied confirmation of Debtor’s previously proposed Amended Plan on April 23, 2024 at Docket 62. Mot. 1:24-26, Docket 63.

Trustee submitted the Declaration of Trina Hayek to authenticate the facts alleged in the Motion. Decl., Docket 65.

## **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 April 23, 2024. Docket 62. 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.

71. [19-22878-E-13](#)      **JOHN RUBALCADA AND LISA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **RODRIGUEZ**      **6-14-24 [34]**  
                         **Mikalah Liviakis**

**Final Ruling:** No appearance at the August 14, 2024 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 July 30, 2024, Docket 38; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by John Albert Rubalcada and Lisa Valerie Rodriguez (“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, Docket 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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