

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

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

**August 21, 2019 at 10:00 a.m.**

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1.	<a href="#"><u>19-23796</u></a> -E-13	<b>SHARON LOCKETT</b> <b>Richard Jare</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>7-19-19 <a href="#"><u>[20]</u></a></b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 21, 2019. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on July 15, 2019.

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

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

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

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

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

2. [19-22537](#)-E-13      **JERRY JORS**  
33 Thru 34                **Steele Lanphier**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-28-19 [35]**

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 30, 2019. The court computes that 52 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on June 24, 2019.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
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The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

3. [19-22537](#)-E-13      **JERRY JORS**  
Steele Lanphier

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-29-19 [44]**

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 31, 2019. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on July 23, 2019.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 18, 2019. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on July 11, 2019.

**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 subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

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

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 19, 2019. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on June 11, 2019.

**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 subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 24, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

This Motion to Convert the Chapter 13 bankruptcy case of Michael Rae Ambers and Bernadette Elizabeth Ambers ("Debtor") has been filed by David Cusick, the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor has not commenced plan payments since filing this case February 22, 2019.
- B. No plan has been filed since the Trustee's Objection to the prior proposed plan was sustained on June 11, 2019.
- C. Debtor lists assets of \$968,596.00 in assets but exempts only \$58,320.00.

## DEBTOR'S OPPOSITION

Debtor filed a Reply on August 7, 2019. Dckt. 77. No declaration was filed along with the Reply supporting the Reply with Debtor's testimony.

Debtor's counsel states in the Reply that Debtor has been "uncharacteristically non-responsive." Debtor's counsel argues given the Transfer of trustees in this case, and because the plan would have been a 100 percent plan, that the case should be dismissed and not converted.

## APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause . . . .

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

## DISCUSSION

Schedule I filed in this case indicates Debtor has net monthly income of \$7,646.61. Dckt. 1. After monthly expenses of \$2,582.16, Debtor is left with a disposable monthly income of \$5,064.45. Schedule J, Dckt. 1.

Debtor's proposed plan, which plan was denied confirmation on June 11, 2019 (Dckt. 72), Debtor proposed monthly payments of \$5,000.00. Plan, Dckt. 2.

In the half-year since filing this case, Debtor has paid \$0.00 into the plan. Declaration, Dckt. 75. After confirmation of Debtor's plan was denied (the court sustaining Trustee's objection thereto), Debtor did not file another plan.

Debtor with the assistance of Debtor's current counsel have filed three other unsuccessful Chapter 13 cases that have been dismissed since July 2015. Though having confirmed a plan in the most recent case, Debtor chose to voluntarily dismiss it shortly after confirmation. Bankr. E.D. Cal. No. 16-2680, dismissed on July 21, 2018.

Despite Trustee filing this Motion seeking conversion, Debtor has chosen not to present testimony or other evidence supporting the Opposition to the Motion.

It is clear from the conduct of Debtor that this case was not filed in good faith. Debtor is simply seeking to delay paying as long as possible, and pay as little to creditors as possible.

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

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

**IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Pamela Gaynell Spring ("Debtor"), is \$1,050.00 delinquent in plan payments.

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

Debtor filed a Reply on August 6, 2019. Dckt. 42. Debtor states she is attempting to become current before the hearing, or in the alternative will file a modified plan.

#### **DISCUSSION**

Debtor is \$1,050.00 delinquent in plan payments, which represents multiple months of the \$350.00 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 shows no modified plan has been filed.

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

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

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

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

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

8.	<a href="#"><u>16-20219-E-13</u></a> <a href="#"><u>DPC-6</u></a>	<b>MAUREEN CLINE</b> <b>Scott Hughes</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>5-1-19 [84]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Maureen Sonja Cline (“Debtor”), is \$3,238.52 delinquent in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed the Declaration of Scott Hughes in Response to the Motion on May 15, 2019.

Dckt. 88. Debtor's counsel Mr. Hughes testifies that Debtor has not contacted him regarding the Trustee's Motion, but requests the court allow Debtor until the time of the hearing to cure the delinquency.

## **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing, Debtor presented \$2,624.00 in cashier's checks, and requested a continuance to the August 2019 Calendar. Civil Minutes, Dckt. 90. The Trustee concurring, the court continued the hearing.

## **DEBTOR'S SECOND RESPONSE**

Debtor's counsel filed another Response to Trustee's Motion on August 7, 2019. Dckt. 91. As with the Opposition previously filed, this pleading was a Declaration/Responsive combo pleading filed in violation of the Local Bankruptcy Rules.

Debtor's counsel states he has not heard from Debtor since the prior hearing.

## **DISCUSSION**

### **Recurrent Failure to Comply with Local Rules**

Debtor's counsel has twice now filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

### **Delinquency in Plan Payments**

At the time of the prior hearing, Debtor was delinquent and only cured a portion of the delinquency. Civil Minutes, Dckt. 90. While nothing has been filed by the Trustee since the prior hearing, Debtor's counsel's Declaration/Response indicates there is still a substantial delinquency. Dckt. 91. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

9.	<a href="#"><u>19-20429-E-13</u></a> <a href="#"><u>DPC-2</u></a>	TANYA HALL Timothy Walsh	MOTION TO DISMISS CASE 6-18-19 <a href="#"><u>[30]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 18, 2019. 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 granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tanya Dorene Hall (“Debtor”), has not filed a new plan since the court sustained Trustee’s Objection to confirmation of the prior plan on March 26, 2019.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on June 19, 2019. Dckt. 34. Debtor's counsel states a new plan will be filed prior to the hearing on the Motion.

## **DISCUSSION**

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 26, 2019. Dckts. 26-29. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on April 16, 2019. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

1. The debtor, George Manhai Francis ("Debtor"), failed to appear at the April 11, 2019 Meeting of Creditors. The Meeting was continued to June 13, 2019.
2. Debtor is delinquent \$1,099.83 in plan payments.
3. Debtor has not provided to Trustee the necessary business documents.
4. Debtor has not provided to Trustee his tax return of transcript for the most recent prepetition filing year.

## **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing on the Motion Debtor appeared and engaged the court in a discussion of his case. Civil Minutes, Dckt. 29. Debtor also professed the understanding of the need to employ counsel to prosecute his case. The court continued the hearing to allow Debtor to prosecute the case.

## DISCUSSION

Since the prior hearing, Debtor has not retained counsel and did not appear at the continued Meeting of Creditors on June 14, 2019. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Debtor is \$1,099.83 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).

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

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. 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).

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 a minute order substantially in the following form holding that:

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2019. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Orlando Cisneros ("Debtor"), has not commenced plan payments.

## DISCUSSION

Debtor has not commenced plan payments. Declaration, Dckt. 47. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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



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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 1, 2019. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Angelo Aroldo Stefano Oliva and Lisa Renee Oliva ("Debtor"), are \$13,280.00 delinquent in plan payments.

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

Debtor filed an Opposition to the Motion on May 15, 2019. Dckt. 89. Debtor states Debtor fell delinquent due to unforeseen medical bills (joint-debtor having been diagnosed with cancer), and that the delinquency will be cured prior to the hearing date.

#### **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing the court continued the hearing on the Motion based on the Trustee's request and this being a 100 percent plan. Civil Minutes, Dckt. 92.

#### **DISCUSSION**

No status report or other pleading has been filed since the prior hearing.

Debtor is \$13,280.00 delinquent in plan payments, which represents multiple months of the \$6,640.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

13. [17-27346](#)-E-13      **KENNETH TABOR**      **MOTION TO DISMISS CASE**  
[DPC-5](#)      **Scott Shumaker**      **7-10-19 [162]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Kenneth Roger Tabor (“Debtor”), is \$4,940.00 delinquent in plan payments.

## DEBTOR'S RESPONSE

Debtor filed a Response on August 7, 2019. Dckt. 166. Debtor states either the delinquency will be cured or new plan filed prior to the hearing.

## DISCUSSION

A review of the docket shows no modified plan has been filed.

Debtor is \$4,940.00 delinquent in plan payments, which represents multiple months of the \$2,470.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

14. [16-24147-E-13](#) **KATHLEEN MCKELVIE** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Peter Macaluso** **7-10-19 [59]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

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

that the debtor, Kathleen A Mckelvie (“Debtor”), is \$2,010.00 delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 6, 2019. Dckt. 63. Debtor states she will be current by the date of the hearing.

## **DISCUSSION**

Debtor is \$2,010.00 delinquent in plan payments, which represents slightly more than one month of the \$1,940.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Robert Wood ("Debtor"), is \$1,280.00 delinquent in plan payments.

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

Debtor filed an Opposition on August 2, 2019. Dckt. 41. Debtor states he will be current prior to the hearing date.

#### **DISCUSSION**

Debtor is \$1,280.00 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 a minute order substantially in the following form holding that:

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

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

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

16. [17-22651](#)-E-13      **MARIO/CHRISTINE BORREGO**      **MOTION TO DISMISS CASE**  
[DPC](#)-4                      **Mark Wolff**                      **7-10-19 [92]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Mario Manuel Borrego and Christine Joy Borrego (“Debtor”), are \$2,100 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on July 18, 2019. Dckt. 96. The Opposition provides an extensive overview of Debtor’s efforts to make the plan payments, and states Debtor is attempting to become current by the date of the hearing.

## DISCUSSION

Debtor are \$2,100.00 delinquent in plan payments, which represents multiple months of the \$715.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

17. [19-20151-E-13](#) **BRIAN/JENNIFER DOWNEY** **MOTION TO DISMISS CASE**  
[DPC-1](#) **Matthew Gilbert** **6-27-19 [16]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 27, 2019. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

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

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



that the debtor, Brian Patrick Downey and Jennifer Lynn Downey (“Debtor”), is \$4,536.30 delinquent in plan payments.

## **DECLARATION OF DEBTOR’S COUNSEL FILED AS OPPOSITION**

Debtor’s counsel Mathew Gilbert filed a “Declaration of Counsel In Opposition” on August 5, 2019. Debtor’s counsel states Debtor will become current by the date of the hearing.

## **DISCUSSION**

### **Recurrent Failure to Comply with Local Rules**

Debtor’s counsel has filed a Declaration as an Opposition, providing the testimony of Debtor’s counsel but also making a request for relief that the Trustee’s Motion be denied. That is not the practice in the Bankruptcy Court. “**Motions**, notices, objections, **responses**, **replies**, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, **and related pleadings** shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

## **Ruling**

Debtor is \$4,536.30 delinquent in plan payments, which represents multiple months of the \$2,268.15 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Noel Robert Loughridge ("Debtor"), is \$5,025.00 delinquent in plan payments.

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

Debtor filed a Response on August 7, 2019. Dckt. 23. Debtor's counsel states a modified plan will be filed to address the delinquency.

#### **DISCUSSION**

Debtor is \$5,025.00 delinquent in plan payments, which represents multiple months of the \$1,725.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

19. [17-24960-E-13](#)      **DOUGLAS/VALERIE LUTES**      **MOTION TO DISMISS CASE**  
[DPC-4](#)      **Peter Macaluso**      **7-10-19 [104]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Douglas Matthew Lutes and Valerie Lyn Lutes (“Debtor”), are \$4,340.00 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 7, 2019. Dckt. 108. Debtor states the delinquency will be cured prior to the date of the hearing.

## **DISCUSSION**

Debtor is \$4,340.00 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 a minute order substantially in the following form holding that:

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Scott David Desper ("Debtor"), is \$1,830.09 delinquent in plan payments.

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

Debtor filed a Response on August 7, 2019. Dckt. 41. Debtor's counsel states a modified plan will be filed prior to the hearing date.

#### **DISCUSSION**

A review of the docket shows no modified plan has been filed.

Debtor is \$1,830.09 delinquent in plan payments, which represents slightly more than 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 a minute order substantially in the following form holding that:

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

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

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

21. [18-23464](#)-E-13      **CYNTHIA PAYSINGER**      **MOTION TO DISMISS CASE**  
[DPC-4](#)      **Peter Macaluso**      **7-18-19 [113]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Cynthia J. Paysinger (“Debtor”), is \$2,704.62 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 7, 2019. Dckt. 117. Debtor states a modified plan will be filed prior to the hearing date.

#### **DISCUSSION**

Debtor is \$2,704.62 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 a minute order substantially in the following form holding that:

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

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

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

22.     [19-20067-E-13](#)     **TYRONE WEST**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **Richard Jare**       **6-18-19 [37]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 18, 2019. 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 granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tyrone K. West (“Debtor”), has not filed a new plan since the Trustee’s Objection to confirmation of the prior plan was sustained on March 26, 2019.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 7, 2019. Dckt. 41. Debtor states he and his counsel are working to resolve the tax claim of the FTB, which otherwise is making retention of Debtor's condo property very difficult. Debtor asserts resolution will take more time.

## **DISCUSSION**

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 26, 2019. Dckt. 33. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 25, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Katrina Culverson ("Debtor"), is \$6,760.66 delinquent in plan payments.

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

Debtor filed a Declaration in Response to the Motion on May 15, 2019. Dckt. 46. Debtor's counsel Mr. Hughes testifies that Debtor has not contacted him regarding the Trustee's Motion, but requests the court allow Debtor until the time of the hearing to cure the delinquency.

#### **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing Debtor and Debtor's counsel addressed some extraordinary family issues and, with Trustee's concurrence, the court continued the hearing. Civil Minutes, Dckt. 48.

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

Debtor's counsel filed another Response to Trustee's Motion on August 7, 2019. Dckt. 49. As with the Opposition previously filed, this pleading was a Declaration/Responsive combo pleading filed in violation of the Local Bankruptcy Rules.

Debtor's counsel states he has not heard from Debtor since the prior hearing.

## DISCUSSION

### Recurrent Failure to Comply with Local Rules

Debtor's counsel has twice now filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

### Delinquency in Plan Payments

At the time of the prior hearing, Debtor was delinquent. Civil Minutes, Dckt. 48. While nothing has been filed by the Trustee since the prior hearing, Debtor's counsel's Declaration/Response indicates there is still a substantial delinquency. Dckt. 49. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, James Stiles and Mona Stiles ("Debtor"), are \$2,831.01 delinquent in plan payments.

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

Debtor filed a Declaration in Response to the Motion on August 7, 2019. Dckt. 83. Debtor's counsel Mr. Hughes testifies as to what the delinquency is, and requests the Motion be denied in the event Debtor becomes current.

#### **Failure to Comply with Local Rules**

Debtor's counsel filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

#### **Delinquency in Plan Payments**

Debtor is \$2,831.01 delinquent in plan payments, which represents multiple months of the \$1,413.92 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

25.	<a href="#"><u>18-21672-E-13</u></a> <a href="#"><u>DPC-2</u></a>	JOSE/JEANNETTE PAGTALUNAN Scott Hughes	CONTINUED MOTION TO DISMISS CASE 5-1-19 <a href="#"><u>[57]</u></a>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Jose Pagtalunan and Jeannette Pagtalunan (“Debtor”), are \$8,397.83 delinquent in plan payments, which represents multiple months of the \$4,208.37 plan payments.

## **DEBTOR'S OPPOSITIONS**

Debtor's counsel Scott Hughes filed a Declaration in opposition and Amended Declaration in opposition to the Motion on May 15, 2019. Dckts. 61, 63.

Debtor's counsel testifies he was "told" several facts resulting in the delinquency in plan payments. Debtor's counsel does not explain why this testimony is admissible evidence. *See* FED. R. EVID. 801, *et, seq.*

Debtor's counsel filed in support of the Opposition as Exhibit A a document titled "Payment Plan To Catch Up." Exhibit A, Dckt. 64. No testimony was provided to authenticate or explain the document.

## **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing the court continued the hearing to August 21, 2019. Civil Minutes Dckt. 66.

## **DEBTOR'S RESPONSE AND AMENDED RESPONSE**

Debtor's counsel filed his unsigned Declaration/Response on August 7, 2019. Dckt. 67. Debtor's counsel states he has not heard from Debtor since the prior hearing, concedes there is a delinquency still, and requests a further continuance.

Debtor's counsel filed an Amended Response on August 7, 2019. Dckt. 69. The Amended Response was signed by counsel.

## **DISCUSSION**

### **Recurrent Failure to Comply with Local Rules**

Debtor's counsel has thrice now filed a Declaration as a Response, providing the testimony of Debtor's counsel but also making a request for relief that the Trustee's Motion be denied. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, **responses**, replies, **declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is grounds for an appropriate sanction. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

### **Failure To Comply with Federal Rules of Evidence**

As discussed above, testimony has been presented which appears to be inadmissible hearsay evidence. *See* FED. R. EVID. 801, *et, seq.* Furthermore, documents are filed which Debtor's counsel refers the court to examine, but for which there was no testimony to authenticate or explain those documents.

## Delinquency in Plan Payments

At the time of the prior hearing, Debtor was delinquent. Civil Minutes, Dckt. 66. While nothing has been filed by the Trustee since the prior hearing, Debtor's counsel's Declaration/Response indicates there is still a substantial delinquency. Dckt. 69. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

26.	<a href="#"><u>18-27372-E-13</u></a> <a href="#"><u>DPC-3</u></a>	<b>DUANE OTT</b> <b>Marc Voisenat</b>	<b>MOTION TO DISMISS CASE</b> <b>7-18-19 [62]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Duane Alexander Ott ("Debtor"), is \$9,699.62 delinquent in plan payments.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on August 7, 2019. Dckt. 66. Debtor's counsel states (without providing any testimony of the Debtor through a declaration) asserts the delinquency was caused by his bank's refusal of direct deposits, which issue has now been resolved.

## **DISCUSSION**

Debtor is \$9,699.62 delinquent in plan payments, which represents multiple months of the \$3,105.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 27, 2019. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Carrie Ann Schaefer ("Debtor"), is \$1,000.00 delinquent in plan payments.

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

Debtor filed a Reply on August 13, 2019. Dckt. 31. Debtor states she will try to become current by the date of the hearing.

#### **DISCUSSION**

Debtor is \$1,000.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

28. [14-30877-E-13](#) **TROY HARDIN** **MOTION TO DISMISS CASE**  
[DPC-6](#) **Peter Macaluso** **7-18-19 [186]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Troy Armean Hardin (“Debtor”), is \$2,700.00 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 7, 2019. Dckt. 190. Debtor states he feels delinquent in plan payments because of an improper termination from his previous place of employment. Debtor asserts he will either be current in payment or file a modified plan by the hearing date.

## **DISCUSSION**

Debtor is \$2,700.00 delinquent in plan payments, which represents multiple months of the \$900.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jesus Crispin Cardenas and Jessica Desiree Cardenas ("Debtor"), is \$5,954.89 delinquent in plan payments.

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

Debtor filed an Opposition on August 7, 2019. Dckt. 134. Debtor states \$1,611.00 was paid on July 22, 2019 and \$6,348.68 will be paid by August 16, 2019.

#### **DISCUSSION**

Debtor is \$5,954.89 delinquent in plan payments, which represents slightly more than one month of the \$4,804.79 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

30.	<a href="#"><u>19-20880</u></a> -E-13 <a href="#"><u>FF-9</u></a>	LAURA/DONALD ENGLAND Gary Fraley	CONTINUED MOTION TO CONFIRM PLAN 4-25-19 [ <a href="#"><u>104</u></a> ]
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**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 25, 2019. By the court’s calculation, 40 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b>
--

Laura Elizabeth England and Donald Lee England (“Debtor”) seek confirmation of the Amended Plan. The Amended Plan provides for payments of \$5,000.00 for 60 months. Dckt. 103. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

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

David Cusick ("the Chapter 13 Trustee") filed an Opposition on May 13, 2019. Dckt. 134. Trustee opposes confirmation on the following grounds:

1. Debtor is delinquent \$230.00 in plan payments.
2. The plan is not feasible because it relies on several motions to avoid lien. Debtor has 7 liens on Debtor's property commonly known as 7235 Larchmont Drive, North Highlands, California.
3. The box under section 1.02 is not checked, indicating nonstandard provisions will not be given any effect. Further, it is unclear whether the nonstandard provisions, filed separately, were served on creditors.

## **DEBTOR'S REPLY**

Debtor filed a Response on May 23, 2019. Dckt. 175. Debtor states Debtor is not delinquent as payments were reduced from \$5,000.00 to \$4,882.20; the 7 creditors with liens were included in the plan; and Debtor can file a Second Amended Plan where the box is checked in section 1.02, but requests instead this be address in the order confirming the plan.

## **JUNE 4, 2019 HEARING**

At the June 4, 2019 hearing the court continued the hearing to allow Debtor to prosecute several lien avoidance motions. Dckt. 221.

## **JULY 2, 2019 HEARING**

At the July 2, 2019 hearing, the Trustee reported that the Debtor was still delinquent. Civil Minutes, Dckt. 252. However, Debtor's Counsel and Trustee together requested that the matter be continued. The court continued the hearing to August 21, 2019.

## **DISCUSSION**

At the prior hearing, Debtor was delinquent in plan payments. Nothing has been filed since the prior hearing.

At the hearing, xxxxxxxxxxxxxxxxxx.

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

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

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

The Motion to Confirm the Amended Chapter 13 Plan filed by Laura Elizabeth England and Donald Lee England (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is  
**XXXXXXXXXX.**

31. [18-20885](#)-E-13      ANTHONY/WENDY GIANOLA      **CONTINUED MOTION TO DISMISS**  
[DPC](#)-4      **CASE**  
4-25-19 [\[88\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 25, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is XXXXXXXXXXXXXXXX.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Anthony Paul Gianola and Wendy Elaine Gianola (“Debtor”), are \$6,764.92 delinquent in plan payments.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition May 15, 2019. Dckt. 92. Debtor states Anthony Paul Gianola moved out of state, and therefore Debtors request additional time to employ a realtor and gather other documents necessary to sell their residence.

The Declaration of Wendy Elaine Gianola was filed in support of the Opposition and adds that she and her husband are divorcing, and that he has left the State of California. Dckt. 94.

## **MAY 29, 2019 HEARING**

At the May 29, 2019 hearing, the Trustee concurring, the court continued the hearing to allow Debtor to prosecute the case. Civil Minutes, Dckt. 101.

## **DISCUSSION**

Since the prior hearing, the court granted a Motion To Sell Debtor's real property for \$530,000.00. Dckts. 107, 108.

The court also denied a motion for relief filed by Mercedes-Benz Financial Services USA LLC as to Debtor's vehicle. Dckts. 134, 135.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 22, 2019. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Eric William Ferrari ("Debtor"), has proposed a plan that will complete in 79 months.

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

Debtor filed an Opposition on August 7, 2019. Dckt. 39. Debtor's counsel states a modified plan was filed and will be set for confirmation hearing.

#### **DISCUSSION**

Trustee asserts the plan will complete in 79 months due to claims filed in this case. Declaration, Dckt. 36. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

Despite Debtor's counsel's representation, the Modified Plan filed August 7, 2019 (Dckt. 38) has not been set for confirmation hearing, or accompanied by evidence.

Debtor's failure to confirm a plan is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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



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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 27, 2019. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, David Eastman Sweeney and Stacy Dawn Ader-Sweeney ("Debtor"), are \$260.00 delinquent in plan payments.

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

Debtor filed an Opposition on August 7, 2019. Dckt. 66. Debtor states double-payments were made in July 2019, but lost. Debtor states the August 2019 payment will be made prior to the hearing, and the July payment either will be made or Debtor will have more information at that time.

#### **DISCUSSION**

Debtor is \$260.00 delinquent in plan payments, which represents multiple months of the \$130.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

34. [19-20997-E-13](#)      **OLAF/SUSAN HELENA OLSEN**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Michael Benavides**                      **7-3-19 [28]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 3, 2019. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Olaf Olsen and Susan Helena Nisonger Olsen (“Debtor”), are \$3,304.00 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 2, 2019 explaining the delinquency in payments was due to child support not coming timely. Dckt. 32. Debtor requests the Motion be addressed at the hearing.

## DISCUSSION

Debtor is \$3,304.00 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 a minute order substantially in the following form holding that:

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

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

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

35. [19-21298-E-13](#)      **JERRI LOWDEN**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Gabriel Liberman**      **6-18-19 [22]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 18, 2019. 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 granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Jerri Serina Lowden (“Debtor”), has not filed a new plan since the Trustee’s Objection to confirmation of the prior proposed plan was sustained on April 30, 2019.

## **DEBTOR'S RESPONSE**

Debtor filed a Response on August 7, 2019. Dckt. 32. Debtor's counsel asserts a modified plan will be filed prior to the hearing.

## **DISCUSSION**

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 30, 2019. Dckts. 20, 21. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 9 days' notice was provided. The court set the hearing for August 21, 2019. Dckt. 35.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

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<b>The Motion to Employ is granted.</b>
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The debtors, Jesse Allan MacDonald and Kimberly M MacDonald ("Debtor") seek to employ Gloria Henderson and Coldwell Banker as a real estate broker ("Broker") pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor used the services of Broker to market Debtor's property commonly known as 9250 Orangevale Avenue, Orangevale, California ("Property").

A Motion To Sell the Property is set for hearing the same day as the present Motion. Dckt. 27.

Gloria Henderson, through her filed Declaration (Dckt. 25), testifies that she is a licensed real estate agent. Dckt. 25. Henderson testifies further she and Coldwell Banker do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the

U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Gloria Henderson and Coldwell Banker as Broker for the Chapter 13 Estate on the terms and conditions set forth in the Exclusive Authorization and Right To Sell Agreement filed as Exhibit A, Dckt. 26. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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

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

The Motion to Employ filed by Jesse Allan MacDonald and Kimberly M MacDonald ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted, and Debtor is authorized to employ Gloria Henderson and Coldwell Banker as Broker for Debtor on the terms and conditions as set forth in the Exclusive Authorization and Right To Sell Agreement filed as Exhibit A, Dckt. 26.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this 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.

**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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 12, 2019. By the court's calculation, 9 days' notice was provided. The court set the hearing for August 21, 2019. Dckt. 36.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

-----.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the debtors, Jesse Allan MacDonald and Kimberly M MacDonald ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 9250 Orangevale Avenue, Orangevale, California ("Property").

The Motion states the following with particularity (FED. R. BANKR. P. 9013) as to the sale terms:

1. Debtor has accepted an offer of \$620,000.00 to sell the Property.
2. Debtor owes \$375,057.83 to Flagstar Bank, FSB, holder of the sole deed of trust on the Property ("Flagstar").



3. After paying Flagstar's claim and costs of sale, \$68,200.00 will be distributed to The Chapter 13 Trustee, David Cusick ("Trustee"), and \$135,629.87 will be distributed to Debtor.

Motion, Dckt. 27. The Motion also states:

17. This Motion will not have any effect on the Debtors existing proposed Chapter 13 Plan.

...

19. The Parties believe the Court has the power and the authority to grant this Motion pursuant to 11 U.S.C. § 105 . . .

*Id.*

In this case, a Chapter 13 Plan was confirmed on May 12, 2016. Order, Dckt. 17. The Confirmed Plan provided for monthly payments of \$150.00, and direct payments of \$2,984.09 to Class 4 claims, and a dividend of 0.09 percent dividend on unsecured claims totaling \$53,343.00. Plan, Dckt. 5.

On Schedule A/B, Debtor stated the Property had a value of \$437,000.00 at the time of filing the petition on March 14, 2016. Dckt. 1. In the "Other Information" section related to this listed Property, Debtor added that the estimated value was actually \$475,000.00, and the other amount is less the estimated cost of sale of \$38,000.00. *Id.*

On Amended Schedule C, Debtor claims an exemption of \$100,000.00 in the Property pursuant to California Code of Civil Procedure section 704.950.

### **Sale Agreement Terms**

The sole term of the Agreement stated in the Motion is the sale price. The Residential Purchase Agreement filed as Exhibit A (Dckt. 33) includes the following relevant sale terms:

1. The proposed buyers are Even Perlick and Michelle Perlick.
2. Escrow shall occur 45 days after acceptance of the Agreement.
3. As initial deposit of \$5,000.00 shall be made within 3 days of acceptance of the Agreement.
4. Seller will not leave the refrigerator.

### **DISCUSSION**

#### **Payoff of All Claims Through Sale of the Property**

The Motion states that the proposed sale of Property will not have an affect on the "proposed" Chapter 13 Plan. This appears to be incorrect.

The Estimated Closing Statement (Dckt. 33 at p. 2-3) indicates there will be a payoff to the

Trustee in the amount of \$68,200.00 (likely made in light of the substantial nonexempt sale proceeds). This appears to be an amount to payoff all claims in and complete the case. However, such is not stated in the Motion.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

### **Sale of the Property**

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it achieves a fair market value for the Property and allows Debtor to complete the Chapter 13 Plan.

Movant has estimated that a percent broker's commission from the sale of the Property will equal approximately \$37,200.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6 percent commission.

### **Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Here, Movant makes a request for waiver of the fourteen day stay only in the prayer for relief, without providing any explanation or stating any grounds for why this relief is warranted.

In light of the escrow period for the sale (which was explained in the Application for Shortened Time (Dckt. 30)), the court shall waive the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by debtors, Jesse Allan MacDonald and Kimberly M MacDonald, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that debtors, Jesse Allan MacDonald and Kimberly M MacDonald ("Movant"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to Even Perlick and Michelle Perlick or nominee ("Buyer"), the Property commonly known as 9250 Orangevale Avenue, Orangevale, California (the "Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$620,000.00, on the terms and conditions set forth in the Purchase Agreement,

Exhibit A, Dckt. 33, and as further provided in this Order.

- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. Movant is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. Movant is authorized to pay a real estate broker's commission in an amount not more than 6 percent of the actual purchase price upon consummation of the sale.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**IT IS FURTHER ORDERED** that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 23, 2019. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Hsin-Shawn Cyndi Sheng ("Debtor"), has not filed, served, and set for confirmation a new proposed plan since the court sustained Trustee's Objection To Confirmation of the prior plan on March 26, 2019. Dckt. 56, 57.

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

Debtor filed an Opposition on May 15, 2019. Dckt. 72. Debtor states the following:

There are problems as outlined in the various documents and in the request for judicial notice filed today. A modified plan is coming soon. At present the debtor is suffering from diminished income because the Chapter 7 trustee has caused income flow to be suspended. We are acting to rectify this.

*Id.* The Request for Judicial Notice referenced in the Opposition states the following:

The debtor herein requests that the court take judicial notice of Documents 146 through 158 in Case number 17-25114-E-7

Dckt. 73.

Debtor filed her Declaration in support of the Opposition. Declaration, Dckt. 75. The Declaration adds the following explanation to shed light on the Opposition which does not offer any

explanation of failure to propose a new plan:

1. I understand that my attorney is showing the trustee and the court the difficulties that I am having in connection with my other pending case. This has caused complications.
2. I do want to continue with the Chapter 13 to save my home from foreclosure. I will be review a modified plan closely as soon as my attorney can prepare one in the next couple days.

*Id.*

## **MAY 30, 2019 HEARING**

At the May 30, 2019 hearing the court continued the hearing on the Motion to afford Debtor and Debtor's counsel the opportunity to structure a plan demonstrating a good faith prosecution of this Chapter 13 case. Civil Minutes, Dckt. 86.

## **DISCUSSION**

When the Trustee filed the Motion, Debtor had not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 26, 2019.

Debtor's Opposition does not state grounds with particularity (FED. R. BANKR. P. 9013) in support of Debtor's request that the Motion be denied. The court is told the Chapter 7 Trustee in Debtor's Chapter 7 Case, No. 17-25114 ("Chapter 7 Case"), has stopped Debtor's cash flow, and Debtor is working to solve the problem. Debtor then requests the court take judicial notice of several documents filed in Debtor's other case to discover the extent of the "problem" here.

Federal Rule of Evidence 201 governs (and allows) judicial notice of certain adjudicative facts. That rule specifies the court may judicially notice a fact that is not subject to reasonable dispute because it (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. FED. R. EVID. 201(b).

One treatise describes the two categories of facts not subject to reasonable dispute as follows:

The first category of adjudicative facts subject to judicial notice are facts which are "generally known within the territorial jurisdiction of the trial court." **This category requires that the fact to be noticed be of general notoriety in the geographical area of the court, but not of the United States as a whole.** It is also not necessary that the fact be universally known within the territorial jurisdiction, since such a requirement would seem to eliminate the category, no fact being so well known by every inhabitant within the jurisdiction as to be truly "universal."

**This category is also limited to facts presently generally known within the jurisdiction.** Obviously, as time passes, the character of a jurisdiction in terms of

its occupations, etc., will change. Accordingly, what a court might properly take judicial notice of in the year 1800 might not be a proper subject of judicial notice in the year 2000.

The combined result of these limitations is that many facts judicially noticed in this category may not seem obvious to an observer from another place and another time. Stated differently, facts judicially noted in this subsection of the Rule may often appear somewhat parochial. Since the standard is somewhat less objective than the standard in the second subcategory, this subcategory may be viewed as more subjective.

Facts judicially noticed which fit within this subcategory are of breathtaking variety. The following are examples of that variety: bingo was largely a senior citizen pastime; major hijacking gangs had preyed on interstate and international commerce at Kennedy Airport; credit cards play vital role in modern American society; newspaper was New Jersey's only statewide newspaper, as well as its largest; incubation period of measles; British authorities in Hong Kong had not undertaken any persecution of persons because of race, religion, or political opinion; method for canning baked beans in New England; most establishments that sell beer also sell tobacco products; escape of ammonia gas from refrigeration coils ordinarily does not happen if coil is properly manufactured and installed; calendars have long been affixed to walls by means of a punched hole at the top of the calendar; the Ohio River is navigable.

The following are some examples of similar facts which have been judicially noticed by state courts: passenger trains and freight trains are customarily separated; specific locations deemed valuable sources of gold; Texas cattle fever is a contagious disease; Connecticut River not navigable at specific location; proper season for the planting of cotton seed; existence of the Great Depression.

**The second subcategory** of adjudicative facts are those facts "which are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

In this subcategory are facts which, while not generally known to persons within the jurisdiction, nonetheless **are of such nature that they can be definitively established by reference to the appropriate sources**. Within this category are facts capable of being determined precisely by astronomical and mathematical calculations, such as the times of sunrise and sunset, moonrise and moonset, the phases of the moon, what day of the week a given date was, and standard actuarial and life expectancy tables. Facts in this subcategory can also often be introduced as information in learned treatises pursuant to Rule 803(17) of the Federal Rules of Evidence.

The following are examples of facts in this subcategory which have received judicial notice: August 6, 1976, was neither Sunday nor a Federal legal holiday; Father's Day, 1979, was June 17; closing stock prices on a specific date; life expectancy tables to calculate damages in persona injury case; present value table;

time of sundown on specific date.

60 AM. JUR. PROOF OF FACTS 3d 175 (Originally published in 2001)(emphasis added).

The Federal Rules of Evidence permit courts to take judicial notice of **facts**, not documents. It is not a tool to be used for when counsel wants to shortcut the filing of documents as exhibits along with a declaration authenticating and explaining the documents.

What Debtor's counsel actually asks here is that the court review documents that have already been filed with the court. These documents are within the court's records.

In reviewing the documents referenced, the court first notes that the range of documents does not pin-point any document to enlighten the court. Docket Number 146 in Debtor's Chapter 7 Case is a Proof of Service.

In digging through the range of pages provided, two motions are filed: a motion to convert the Chapter 7 case to one under Chapter 11, and a motion to compel professionals of the estate to file fee applications. Bankr. E.D. Cal. No. 17-25114, Dckts. 147, 149. In reviewing those motions the general allegation is that the chapter 7 trustee is attempting to liquidate Debtor's property to pay unsecured claims and administrative expenses in the case.

While it may appear to the Debtor that the filing of these motions creates a self-evident explanation for why the hearing on this Motion needs to be continued, such is not so clear to the court.

Rather, it appears that Debtor's Chapter 13 case relies on assets of the Debtor which may be administered in Debtor's pending Chapter 7 case.

Whether those assets are administered or whether allegations made by Debtor in the motion to convert the Chapter 7 case to 11 are correct, the question remains why creditors in this case should be forced to sit and wait on a result.

### **1<sup>st</sup> Amended Plan Filed May 23, 2019**

Debtor's 1<sup>st</sup> Modified Plan has been filed. Dckt. 80. With respect to the required Plan payments, the additional provisions state:

Section 7.10 - - NonStandard Provisions, for section 2.01, merely expanded entries:

Monthly plan payments. To complete this plan, Debtor shall submit to the supervision and control of Trustee on a monthly basis the sum of \$ Debtor shall pay \$1000 for each of the first 6 months and thereafter \$3500 from future earnings. This monthly plan payment is subject to adjustment pursuant to section 3.07(b)(2) below and it must be received by Trustee not later than the 25th day of each month beginning the month after the order for relief under chapter 13. The monthly plan payment includes all adequate protection payments due on Class 2 secured claims.

For the Citibank, N.A., as Trustee, claim, Debtor states that she will seek a loan modification. *Id.*, ¶ 7.02. The adequate protection payment (11 U.S.C. § 361) to be made Citibank, N.A., as Trustee, on its (\$1,272,304.32) secured claim, for which there is a (\$673,126.03) pre-petition arrearage, Proof of Claim No. 2, is to be \$565.00. This is stated by the Debtor to only be sufficient to pay the projected costs of insurance and property taxes, with this payment to “resume” in July 2019. *Id.* ¶ 7.04.

Then, beginning in September 2019, the monthly adequate protection payment will increase to \$2,700, of which \$1,120 a month is for property taxes and insurance, and \$1,580 for “principal and interest.” *Id.*

On her Amended Schedule I Debtor states that her monthly gross income is \$6,336, which consists of \$1,234 of business/rental income, \$1,198.00 of Social Security, and \$3,904.00 of “INCREASED Draws & Income Stream/Bangeter Investment (which Debtor states will only be available if she confirms a Chapter 13 Plan). Dckt. 25 at 1-2. Generating the business/rental income is dependent on the Chapter 7 Trustee in the Debtor’s Chapter 7 case abandoning the property generating the income to Debtor. *Id.*

On Amended Schedule J Debtor states that she has (\$2,836) in monthly expenses, excluding mortgage payments, property taxes, and insurance. *Id.* at 4-6. These expenses include (\$225.00) to maintain “Hyatt & Diamond” timeshares. However, for the next five years Debtor’s expenses provide:

\$550 for food and housekeeping supplies

Assuming \$75 a month for housekeeping supplies, that leave  
\$475 for food, which is a 30 day month averages (\$5.27) per meal.

\$250 for transportation - Debtor listing a 2014 C250 Mercedes Benz on Schedule A/B (Dckt. 1 at 13).

The \$250.00 a month is for gas, maintenance, repairs, registration. Assuming \$50 a month for maintenance and repairs and \$20 for registration, that leaves \$150 for gas. At \$4.00 a gallon, Debtor can purchase 38 gallons a month, which at an average of 20 miles to the gallon gives Debtor a driving range of 760 miles.

\$71 for entertainment

\$150 for medical and dental expenses

These appear to present a challenging economic scenario for Debtor.

On Schedule A/B Debtor lists the property securing the Citibank, N.A., as Trustee, claim to have a value of \$940,000.00

Using the Microsoft Loan Calculator Program, *if* the creditor modifies the loan balance down to what Debtor says the property is worth, *and if* the creditor fully amortizes the new loan balance over



thirty years, *and if* the creditor allows a 5% interest rate for a 100% loan to value ratio loan, then *just the monthly principal and interest payment* would be (\$5,046.12). Debtor tells us in the Plan that monthly escrow amount for property taxes and insurance is (\$1,120.00). Thus, just the monthly payments for principal, interest, taxes, and insurance would be (\$6,166.12).

Given that in Debtor's austere budget above there is only \$3,500.00 on net monies after the payment of her other reasonable and necessary expenses (Amended Schedule J, Dckt. 25 at 4-5), the Debtor falls short each month by (\$2,666.12) in having funds to pay a projected modified loan.

### **Debtor's Chapter 7 Case**

On May 13, 2019, Debtor and her counsel filed a Motion to Convert her Chapter 7 case to one under Chapter 11. 17-25114; Motion, Dckt. 149. In the Motion Debtor asserts that the Chapter 7 Trustee "has acted inappropriately in attempting to sell outside of the ordinary course of business, WITHOUT A COURT ORDER, property of the estate in an amount grossly disproportionate to the minuscule amount of unsecured claims." *Id.* at p. 2:1-4. Debtor notes that she has already received her Chapter 7 discharge in that bankruptcy case.

Debtor further asserts that the Trustee making demand for the Investment Fund brokered by Bangerter Financial Services, Inc. which Debtor had to be turned over to the Trustee is improper. Debtor is not arguing whether the investments are property of the bankruptcy estate, but asserts that by the Trustee instructing the sale of the investments so that they can be liquidated into cash to be administered by the bankruptcy estate is an improper "sale" of property of the bankruptcy estate without court order.

Debtor objects that the trustee has, by instructing Fidelity Investments to "remit those funds to the bankruptcy estate" tried to sell property without a court order.

*Id.*, p. 4:10-12. Debtor asserts that such sale of all the investment is unreasonable in that there are only (\$9,800) in general unsecured claims to be paid.

In the Trustee's Opposition, he states that he has not instructed the sale of such investments, just that he asserts the right to control property of the bankruptcy estate. *Id.*; Opposition, Dckt. 161. The Trustee asserts that when he asserted control over the investments the Debtor was attempting to sell the investments. The Trustee projects that \$40,200.00 is all that is required to administer the Chapter 7 estate. *Id.*, ¶ 23.

With the assistance of her former counsel in this case, Debtor filed her original Schedules on August 30, 2017. *Id.*; Dckt. 32. On Schedule A Debtor stated under penalty of perjury that her real property had a value of only \$830,000. *Id.*; Dckt. 32 at 2. She listed two other properties, one with a value of \$850,000 and the other with \$215,000. *Id.* at 3.

### **Turnover of Property of the Estate**

In the Chapter 7 Case the Trustee obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. *Id.*; Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

Debtor's Response fails to acknowledge that a bankruptcy estate has been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.

...

The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate.** 11 U.S.C. § 704, 721.

*Id.*; Civil Minutes, p. 5; Dckt. 108 (emphasis added).

### **Apparent Quick Conclusion of Chapter 7 Case**

There exists a very modest amount of claims and administrative expenses in the Chapter 7 case (at least modest in light of the very valuable investments which Debtor states exists and should not be "sold" by the Chapter 7 Trustee). A Debtor working in good faith with the Trustee could quickly identify the investments to be liquidated, claims and expenses paid, and Chapter 7 case closed. Then, all of the remaining property of the bankruptcy estate would be abandoned back to the Debtor when the Chapter 7 case was closed.

There would be no need to convert the case to one under Chapter 11 and incur \$20,000 to \$30,000 in Chapter 11 plan confirmation and administration expenses - so long as the Debtor was working to prosecute her Chapter 7 case in good faith. To the extent a trustee was attempting to act improperly and waste property of the bankruptcy estate by unnecessarily liquidating property of the bankruptcy estate, the Debtor and/or the U.S. Trustee seeking relief from the court would quickly put an end to such "shenanigans" (as a former law clerk for this court would say).

### **Denial of Modified Plan Confirmation**

At a hearing July 16, 2019, the court denied confirmation of Debtor's Modified Plan substantially based on Debtor's understating the adequate protection payment in the Ensminger provision. Civil Minute, Dckt. 110.

### **RULING**

The Debtor's proposed Modified Plan was denied confirmation on July 16, 2019. Dckts. 110, 112. Since that time, no new plan has been proposed.

At the hearing, **xxxxxxxxxxxxxxxxxx**.

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

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

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

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

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

39. [17-25114](#)-E-7  
[DNL](#)-10

HSIN-SHAWN SHENG  
Richard Jare

CONTINUED MOTION FOR  
COMPENSATION BY THE LAW  
OFFICE OF DESMOND, NOLAN,  
LIVAICH & CUNNINGHAM FOR J.  
RUSSELL CUNNINGHAM, TRUSTEES  
ATTORNEY(S)  
6-18-19 [[199](#)]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2019. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

**The Motion for Allowance of Professional Fees is granted.**

Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") for Eric Nims, the Chapter 7 Trustee ("Client" or "Trustee"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period October 30, 2017, through June 17, 2019. The order of the court approving employment of Applicant was entered on November 3, 2017. Dckt. 55. Applicant requests fees in the amount of \$28,000.00 and costs in the amount of \$1,794.13. FN.1.

-----  
FN.1. Applicant previously sought a reduced fee of \$25,205.87 and costs in the amount of \$1,794.13. Given the Opposition of the Debtor, Applicant now requests the full \$28,000.00. Dckt. 240.  
-----

## **JULY 11, 2019 HEARING**

At the July 11, 2019 hearing, the court set a briefing schedule at the request of Debtor and continued the hearing. Dckts. 209, 214.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on August 2, 2019. Dckt. 228. Debtor argues that Trustee should be surcharged for emotional distress damages caused, and no fees awarded.

Debtor argues Applicant sought facts through discovery which were already available to Applicant, that the adversary proceeding in this case to evict the tenant in the Fremont condominium was filed without due diligence, and that hours were intentionally run up.

Debtor suggests that if the Motion is granted, that Debtor should be permitted to sue Applicant pursuant to the Barton Doctrine.

## **APPLICANT'S REPLY**

Applicant filed a Reply on August 9, 2019. Dckt. 240. Applicant argues the following:

1. If Debtor is pursuing legal action against Applicant, Debtor needs leave of the court.
2. The transcript filed by Debtor as an Exhibit (Dckt. 230) demonstrates 6 demands for the turnover of \$46,621.81 in non-exempt funds were made.
3. The fees generated in this case were inflated due to Debtor's refusal to comply.
4. The services here were necessary and reasonable.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?

- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors’ Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is

the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general case administration, asset recovery and disposition, and tax liability assessment. The Estate has \$43,000.00 of unencumbered monies to be administered as of the filing of the application. Dckt. 201. The court finds the services were beneficial to Client and the Estate and were reasonable.

## **FEES AND COSTS & EXPENSES REQUESTED**

### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided. The Application also provides a detailed overview of the events in this case. The task billing categories used by Applicant are as follows:

Litigation and Contested Matters: Applicant spent 39.2 hours in this category.

Assessment and Recovery of Property of the Estate: Applicant spent 28.1 hours in this category.

Asset Disposition: Applicant spent 6.8 hours in this category.

Fee and Employment Applications: Applicant spent 7.0 hours in this category.

General Case Administration: Applicant spent 5.9 hours in this category.

Administration and Objections: Applicant spent 4.3 hours in this category.

Tax Issues: Applicant spent 4.1 hours in this category.

Claims: Applicant spent 2.8 hours in this category.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
J. Russel Cunningham	30.4	\$425.00	\$12,920.00
Nicholas Kohlmeyer	66.8	\$225.00	\$15,030.00
Courier	1	\$50.00	\$50.00

<b>Total Fees for Period of Application</b>	\$28,000.00
<b>Total Fees Requested</b>	\$28,000.00

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$1,794.13 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Cost</b>
Photocopies	\$648.40
Postage	\$124.89
Advanced Service and Recording Fees	\$1,020.84
<b>Total Costs Requested in Application</b>	\$1,794.13

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Opposition by Debtor**

Debtor argues Applicant sought facts through discovery which were already available to Applicant, that the adversary proceeding in this case to evict the tenant in the Fremont condominium was filed without due diligence, and that hours were intentionally run up. On this basis, Debtor argues that Applicant should be allowed “No, ZERO fees.” Dckt. 228 at 2:6(emphasis in original).

Purportedly, the reason for disallowing all the fees is to offset emotional distress damages suffered by Debtor.

Despite Debtor’s consternation over Applicant’s conduct in this case and allegations that fees have been driven up, Debtor does not point to any fees as unreasonable. Applicant’s Detailed Transaction File List was filed as Exhibit A. Dckt. 203. A comprehensive list of all fees were given, yet no fees were pointed to as the “smoking gun” showing that fees were unreasonably driven up.

Debtor argues that several facts were known to Trustee and no discovery was necessary. If this were true and Debtor were cooperating, it is unclear why it was necessary for the court to order the turnover of real property and post-petition rent monies. *See* Order, Dckt. 109.

Further, it appears to be the argument of Debtor that she should have been taken at her word, and that Trustee and Applicant should not have done their due diligence in assessing the veracity of Debtor’s testimony. Such an argument is not well-taken.



## Fees

The claims in this case were not significant in relation to the services performed by Applicant. Rather, the driving force behind the \$25,000+ in fees herein sought has been the conduct of, and conflict with, the Debtor.

Applicant summarizes at length in the Motion Debtor's lack of cooperation and efforts to hinder Client from fulfilling his fiduciary duties as the Chapter 7 Trustee.

Client in this case obtained an order for the Debtor to turn over the Barrington Terrace Real Property listed on the Schedules that was property of the Bankruptcy Estate. Order, Dckt. 109. The court's Findings of Fact and Conclusions of law in granting the Turnover Motion, include:

Debtor's Response fails to acknowledge that a bankruptcy estate has been created and that, pursuant to Bankruptcy Code § 541(a)(1), the bankruptcy estate includes all legal or equitable interests of the debtor as of the commencement of the case. Rather, **Debtor appears to exempt herself from federal law** as enacted by Congress, assert that she can file Chapter 7 and **ignore the law**, and **assert that Chapter 7 exists as her personal tool** to use (and abuse) against others.

...

The court notes **that Debtor has chosen (or refused) to provide any testimony** in opposition to this Motion, instead using the two paragraph arguments of her counsel as a shield between her and the Motion. **Debtor's counsel ignores 11 U.S.C. § 541 and the obligations of the Chapter 7 Trustee to control, assemble, and manage all property of the bankruptcy estate. 11 U.S.C. § 704, 721.**

Civil Minutes, p. 5; Dckt. 108 (emphasis added).

At the hearing on Debtor's motion to convert this case to one under Chapter 11, the court stated the following:

Here, the record is replete with evidence as to Debtor's true reasons for wanting dismissal. Debtor states:

I want Cunningham and Nims ejected from the administration of this case and I hope that the court will convert the case to so facilitate.

Declaration ¶ 6, Dckt. 171, and:

I intend to oppose vigorously any fees of the Chapter 7 estate and its professionals anyway, so that is an expense that is not avoidable. Why should I Pay Cunningham and Nims if they just purposely play dumb to rack up fees.

*Id.*, ¶ 6, and:

I need my assets unfrozen in order to fund my other case under chapter 13, case number 19-20302-E-13.

Declaration ¶ 8, Dekt. 177.

There is much bad blood between the Debtor and Trustee in this case. The result of this has been the generation of significant administrative fees in a Chapter 7 with relatively modest unsecured claims. This appears to be driven in significant part by Debtor dictating to her counsel what will be done, what legal arguments will be made, and how the Debtor will not cooperate with the Trustee, nor will the Debtor turn over property of the bankruptcy estate to the Trustee.

...

The court can see that Debtor wants to convert the case to be back in control of the Estate, to oust the Trustee and his counsel, and to relieve “stress” of having to comply with federal Bankruptcy Law. But, there has been no attempt to demonstrate what a possible Chapter 11 case would look like, whether a Chapter 11 case would be successful, or whether a Chapter 11 would make financial sense.

...

Equally unpersuasive were the arguments of Debtor’s counsel that, in his opinion, the standard provisions of a deed of trust in California nullify federal law as enacted by Congress in 11 U.S.C. § 363(c)(2) expressly prohibiting the use of cash collateral unless either ordered by the court or consent under 11 U.S.C. § 363(c)(2) is given by the creditor. Rather, Debtor’s counsel’s arguments would only further delay the conclusion of this bankruptcy case, raising serious federal law issues and disputes, fighting over theoretical, academic arguments of what might possibly be.

As the court made clear at the hearing, Debtor’s conduct in this case has not been one of diligent, good faith prosecution. It as if every step she takes is to frustrate the administration of this case and foment litigation and otherwise unnecessary expense. In some respects the Chapter 7 trustee has played into Debtor’s hands by appearing to become paralyzed by the threats and demands of Debtor that she pipes through her counsel. This has led to not only a waste of time and money by the Debtor, Trustee, and the Bankruptcy Estate, but waste of the court’s time and resources.

Debtor has demonstrate that she is not capable of complying with federal Bankruptcy Law or prosecute a bankruptcy case. As said before. If the Debtor were proceeding in good faith, she could bring the Chapter 7 case to a conclusion and have her fight over what reasonable fees and costs the professionals in the Chapter 7 case can be allowed. In light of the substantial assets in the Chapter 7 case, there could be an abandonment of some of the assets after all claims are paid to insure that Debtor has sufficient funds to pay her counsel to take up the fight over the professional fees in the Chapter 7 case.

As the court made clear at the hearing, Debtor’s conduct in this case has not been one of diligent, good faith prosecution. It as if every step she takes is to frustrate the administration of this case and foment litigation and otherwise

unnecessary expense. In some respects the Chapter 7 trustee has played into Debtor's hands by appearing to become paralyzed by the threats and demands of Debtor that she pipes through her counsel. This has led to not only a waste of time and money by the Debtor, Trustee, and the Bankruptcy Estate, but waste of the court's time and resources.

Civil Minutes, Dckt. 179 at 7-9.

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. It is unfortunate when, due to the litigation strategy of a party, higher than normal administrative expenses are incurred and have to be paid from a surplus estate. But a litigious party failing to comply with the Bankruptcy Code cannot validly claim that reasonable and necessary fees incurred in enforcing the rights of this Bankruptcy Estate should not be paid since the bankruptcy trustee should just have capitulated to Debtor's conduct.

First and Final Fees in the amount of \$28,000.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

### **Costs & Expenses**

First and Final Costs in the amount of \$1,794.13 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

The court authorizes the Chapter 7 Trustee to pay the fees and costs allowed by the court.

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$28,000.00
Costs and Expenses	\$1,794.13

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Desmond, Nolan, Livaich & Cunningham, the Attorney ("Applicant") Attorney for Eric Nims, the Chapter 7 Trustee ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Desmond, Nolan, Livaich & Cunningham, is allowed the following fees and expenses as a professional of the Estate:

Desmond, Nolan, Livaich & Cunningham, Professional employed by Eric Nims,  
the Chapter 7 Trustee:

Fees in the amount of \$28,000.00

Expenses in the amount of \$1,794.13,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330  
as counsel for the Chapter 7 Trustee.

**IT IS FURTHER ORDERED** that the Chapter 7 Trustee is authorized  
to pay the fees and costs allowed by this Order from the available funds of the  
Estate in a manner consistent with the order of distribution in a Chapter 7 case.

**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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2019. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00).

The Motion to Abandon was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----  
-----.

**The Motion to Abandon is granted.**

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by the Chapter 7 Trustee, Eric Nims ("Trustee") requests that the court authorize him to abandon property identified as:

1. 2769 Barrington Terrace, Fremont, California.
2. Debtor's cash and securities in an account at Fidelity Investment in excess of \$50,000.00 (collectively the "Property").

Movant argues the Property is of inconsequential value and benefit to the Estate because the Estate already has the \$43,000.00 in nonexempt funds to pay all allowed claims in this case.

## **JULY 15, 2019 HEARING**

At the July 15, 2019 hearing the court continued the hearing to August 21, 2019. Dckt. 215.

## **DISCUSSION**

The court finds that there are negative financial consequences for the Estate if it retains the Property—the Property not being necessary to pay all allowed claims in full. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Trustee to abandon the Property.

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 Abandon Property filed by the Chapter 7 Trustee, Eric Nims (“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 Compel Abandonment is granted, and the property identified as:

1. 2769 Barrington Terrace, Fremont, California.
2. Debtor’s cash and securities in an account at Fidelity Investment in excess of \$50,000.00 (collectively the “Property”)

is abandoned to Hsin-Shawn Cyndi Sheng by this order, with no further act of the Chapter 7 Trustee required.

# FINAL RULINGS

41. [19-23160](#)-E-13      **SHIRLEAN MOORE-JORDAN/**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **KENNETH JORDAN**      **7-17-19 [30]**  
Pro Se

**Final Ruling: No appearance at the August 21, 2019 hearing is required.**

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 17, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<b>The hearing on the Motion is continued to to September 25, 2019 at 10:00 a.m.</b>
--

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

1. the debtors, Shirlean Sparkle Moore-Jordan and Kenneth Bernard Jordan ("Debtor"), have not commenced plan payments.
2. Debtor did not appear at the July 11, 2019 Meeting of Creditors.
3. Debtor has not provided a copy of Debtor's most recent tax return.
4. Debtor filed Debtor's Chapter 13 Plan using the wrong plan form.
5. Debtor's Chapter 13 Plan has not been served on parties in interest.

## DEBTOR'S REQUEST FOR CONTINUANCE

Debtor filed a Statement requesting a 30 day continuance on August 8, 2019. Debtor states that after the death of her husband she was injured in an auto accident. Debtor states further her son attended the first meeting of creditors and was advised to seek counsel. Debtor has since contacted several attorneys and will have counsel by the next scheduled date.

## DISCUSSION

In light of the Debtor's request and representation that Debtor has contacted several attorney's and is seeking counsel, the court shall continue the hearing on the Motion to September 25, 2019 at 10:00 a.m.

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

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

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

**IT IS ORDERED** that the hearing on the Motion is continued to September 25, 2019 at 10:00 a.m.

42.	<a href="#"><u>19-22901-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>DEANDRA JACKSON</b> <b>Pro Se</b>	<b>MOTION TO DISMISS CASE</b> <b>7-17-19 [30]</b>
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**Final Ruling: No appearance at the August 21, 2019 hearing is required.**

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Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 17, 2019. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion to Dismiss is continued to September 25, 2019 at 10:00 a.m..**

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



1. the debtor, DeAndra Renee Jackson (“Debtor”), has not filed a motion setting a hearing for confirmation of the Amended Plan.
2. Debtor is \$330.00 delinquent under the Amended Plan.
3. Debtor has not provided several of the 11 U.S.C. § 521 documents.

The Chapter 13 Trustee, David Cusick (“Trustee”), filed his Declaration in support of the Motion. Dckt. 32.

## **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on August 14, 2019. Dckt. 40. Debtor’s counsel reports that she is in the process of securing documentation to file an amended plan which would resolve the Motion. Debtor’s counsel states further she substituted into this case August 12, 2019, and therefore requests the hearing on this Motion be continued to allow her time to secure documentation.

## **DISCUSSION**

### **Request For Continuance**

Debtor’s counsel, having substituted into the case on August 12, 2019 (Dckt. 38), requests the hearing on the Motion be continued to allow her to gather documents and prosecute the case.

In light of the Debtor’s request and good cause appearing, the court shall continue the hearing to September 25, 2019 at 10:00 a.m.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to September 25, 2019 at 10:00 a.m.

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion—Hearing Not 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 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Matthew Blair Thompson ("Debtor"), is \$10,515.64 delinquent in plan payments.

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

Debtor filed a Response on August 7, 2019. Dckt. 65. Debtor's counsel states a modified plan will be filed to cure the delinquency.

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

Debtor filed a Modified Plan and Motion to Confirm on August 13, 2019. Dckts. 67, 73. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 69-71. 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 has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 53. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling: No appearance at the August 21, 2019 hearing is required.**

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 18, 2019. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, William Keith Carter and Mary Elizabeth Carter ("Debtor"), have not filed a new plan after the court sustained Objections to confirmation of Debtor's prior proposed plan on February 12, 2019.

## **DISCUSSION**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 12, 2019. Dckts. 27-30. 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.

**August 21, 2019 at 10:00 a.m.**  
**Page 86 of 128**

## **DISCUSSION**

Debtor is \$1,965.16 delinquent in plan payments, which represents slightly more than 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 a minute order substantially in the following form holding that:

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 27, 2019. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Sally Janine Allen ("Debtor"), is \$5,0991.01 delinquent in plan payments.

#### DISCUSSION

Debtor is \$5,0991.01 delinquent in plan payments, which represents multiple months of the \$1,699.67 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

48.    [16-24476-E-13](#)        **HENRY/PENELOPE GARCIA**        **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Bruce Dwiggins**                    **7-10-19 [38]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Henry Moya Garcia and Penelope Lucile Garcia (“Debtor”), are \$1,500.00 delinquent in

plan payments.

## **DISCUSSION**

Debtor is \$1,500.00 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 a minute order substantially in the following form holding that:

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Adrea Yolanda Tarver (“Debtor”), is \$3,905.00 delinquent in plan payments.

## DISCUSSION

Debtor is \$3,905.00 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 a minute order substantially in the following form holding that:

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

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

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

50.     [17-20957-E-13](#)     **TRACY DA ORO**     **MOTION TO DISMISS CASE**  
          [DPC-1](#)           **John Sargetis**       **7-10-19 [23]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tracy Lynn Da Oro (“Debtor”), is \$5,564.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$5,564.00 delinquent in plan payments, which represents multiple months of the \$2,782.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 24, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1. the debtor, Latoya Kamilah E Smith (“Debtor”), is \$2,324.36 delinquent in plan payments.
2. Debtor has not filed a new plan since Debtor’s Motion To Confirm the prior proposed plan was denied on May 21, 2019.

## DISCUSSION

Debtor is \$2,324.36 delinquent in plan payments, which represents multiple months of the \$2,324.36 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of

confirmation to Debtor's prior plan on May 21, 2019. Dckts. 56, 57. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 10, 2019. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Anthony Gutierrez and Angel Gutierrez (“Debtor”), are \$5,741.00 delinquent in plan payments

## **DISCUSSION**

Debtor is \$5,741.00 delinquent in plan payments, which represents multiple months of the \$626.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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



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

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

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

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

53. [19-20047-E-13](#)      **JULIUS/CHRISTINA JARVIS**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Chad Johnson**                      **7-23-19 [42]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 23, 2019. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case because the debtors, Julius T Jarvis and Christina M Jarvis (“Debtor”), have not filed a new plan since the Trustee’s Objection to the prior plan was sustained on April 16, 2019. Dckt. 41.

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

Debtor filed an Amended Plan and Motion to Confirm on July 24, 2019. Dckts. 46, 50. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 48, 49. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 18, 2019. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Taujai Donae Carey (“Debtor”), is \$2,102.00 delinquent in plan payments.

## DISCUSSION

Debtor is \$2,102.00 delinquent in plan payments, which represents multiple months of the \$470.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

55.    [19-20834](#)-E-13        **ALBERT SMITH**                                **MOTION TO DISMISS CASE**  
         [DPC-1](#)                    **Douglas Jacobs**                                **7-24-19 [34]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 24, 2019. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

1.        the debtor, Albert Smith (“Debtor”), is \$2,762.00 delinquent in plan

payments.

2. Since the court denied confirmation of Debtor's prior plan on June 4, 2019, no new plan has been filed.

## DISCUSSION

Debtor is \$2,762.00 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).

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 June 4, 2019. Dckts. 32, 33. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 10, 2019. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Dennis Craig Morairty ("Debtor"), is \$6,351.52 delinquent in plan payments.

#### DISCUSSION

Debtor is \$6,351.52 delinquent in plan payments, which represents multiple months of the \$3,325.76 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is 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 18, 2019. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Damion Alexander Hribik (“Debtor”), is \$5,242.10 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$5,242.10 delinquent in plan payments, which represents multiple months of the \$2,620.85 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 1, 2019. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Charlene Joy Ojascastro ("Debtor"), is delinquent \$4,540.00 in plan payments.
2. Debtor has not filed a new plan since the court sustained Trustee's Objection To Confirmation of the prior proposed plan.
3. Debtor appeared at the June 27, 2019, Meeting of Creditors but failed to provide proof of Social Security Number.

## DISCUSSION

Debtor is \$ 4,540.00 delinquent in plan payments, which represents multiple months of the \$2,270.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 June 25, 2019. Dckt. 43. 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).

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

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

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 1, 2019. The court computes that 20 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: \$70.00 due on July 25, 2019.

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

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

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

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

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

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

60. [19-21199](#)-E-13 TED/JUNE KATSINIS  
[DPC-1](#) Len Reid Reynoso  
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE  
7-3-19 [\[27\]](#)

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion To Dismiss was dismissed without prejudice, and the matter is removed from the calendar.**

61. [19-21105](#)-E-13 RAYMOND/HOPE HANNEMANN  
Muoi Chea

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-1-19 [\[31\]](#)

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 3, 2019. The court computes that 49 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on June 26, 2019.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
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The court’s docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.





**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 3, 2019. The court computes that 18 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: \$71.00 due on July 29, 2019.

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

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

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

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

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

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

65. [19-23340](#)-E-13 ANTOINE FEHER  
36 Thru 37 Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-28-19 [26]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
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The case having previously been dismissed, the Order To Show Cause is discharged as moot.

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

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

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

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

66. [19-23340](#)-E-13 ANTOINE FEHER  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-15-19 [32]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

The case having previously been dismissed, the Order To Show Cause is discharged as moot.

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

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

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

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



67. [15-24723](#)-E-13      MATTHEW MATZEN      MOTION TO DISMISS CASE  
[DPC-1](#)      Mikalah Liviakis      7-18-19 [[24](#)]  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

68. [18-24026](#)-E-7      MICHELLE LUND      MOTION TO DISMISS CASE  
[DPC-2](#)      Peter Macaluso      6-27-19 [[56](#)]  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

69. [19-23230](#)-E-13      JOSEPH BURCHETT      ORDER TO SHOW CAUSE - FAILURE  
26 Thru 27      Pro Se      TO PAY FEES  
DEBTOR DISMISSED: 07/30/2019      6-25-19 [[24](#)]

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

The case having previously been dismissed, the Order To Show Cause is discharged as moot.

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

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

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

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

70. [19-23230-E-13](#)      **JOSEPH BURCHETT**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      Pro Se      7-30-19 [[55](#)]  
**WITHDRAWN BY M.P: DEBTOR**  
**DISMISSED: 07/30/2019**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

-----

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

71. [19-21331-E-13](#)      **GARY VASQUEZ**      **ORDER TO SHOW CAUSE - FAILURE**  
28 Thru 29      David Foyil      **TO PAY FEES**  
6-10-19 [[32](#)]

**Final Ruling:** No appearance at the August 21, 2019 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 3, 2019. The court computes that 70 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on June 3, 2019.

<p><b>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</b></p>
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The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

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

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

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

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
7-8-19 [\[40\]](#)

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, 2019. The court computes that 42 days' notice has been provided.

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

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

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.

73. [18-25901-E-13](#) **RICHARD CAMP AND JACQULYN** **MOTION TO DISMISS CASE**  
[DPC-2](#) **BELL** **6-27-19 [30]**  
**Mark Shmorgon**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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<p><b>The Motion To Dismiss is dismissed without prejudice.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 7, 2019, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Richard Camp and Jacquelyn Bell (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

74. [19-20606-E-13](#) **ROBERT WATTS AND SONYA** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Justin Kuney** **SMITH6-18-19 [27]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 13, 2019, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Robert Bernard Watts and Sonya Kristi Smith (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

75. [18-26407-E-13](#) **NICHOLE MORGAN** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Ronald Holland** **7-18-19 [40]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 7, 2019, Dckt. 47; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion

pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Nichole Cleveland Morgan (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 14, 2019, Dckt. 90; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Wanda Collier-Abbott (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 90, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 13, 2019, Dckt. 62; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Charena M Glasper-Norris (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the

court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 62, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

78. [18-27289-E-13](#) **SALVADOR CARABEO** **MOTION TO DISMISS CASE**  
[DPC-3](#) **Tom Gillis** **7-17-19 [54]**

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 6, 2019, Dckt. 67; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Salvador Pina Carabeo (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 67, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 13, 2019, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Karen Mechelle Ridgle (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 6, 2019, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Jennifer Roxanne Munoz (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the

court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

81.	<a href="#"><u>17-22223-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>DALE PROSISE</b> <b>Doublas Jacobs</b>	<b>MOTION TO DISMISS CASE</b> <b>7-10-19 [28]</b>
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**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 6, 2019, Dckt. 34; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Dale Robert Prosise (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 6, 2019, Dckt. 54; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Russell Thornton Carlsen and Patricia Jean Carlsen (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

84. [16-20250](#)-E-13 INES/ANGELINA MORENO MOTION TO DISMISS CASE  
[DPC](#)-4 Bruce Dwiggin 7-10-19 [67]  
WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

-----

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

85. [18-23358](#)-E-13 MATTHEW/TARA HANNAH MOTION TO DISMISS CASE  
[DPC](#)-4 David Foyil 7-17-19 [79]

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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<b>The Motion To Dismiss is dismissed without prejudice.</b>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 14, 2019, Dckt. 93; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Matthew Hannah and Tara Hannah (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 93, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

86. [18-20885](#)-E-13      ANTHONY/WENDY GIANOLA      MOTION TO DISMISS CASE  
[DPC-5](#)      Peter Macaluso      7-10-19 [[119](#)]

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

-----

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

87. [16-24697](#)-E-13      ANDREA PATTON      MOTION TO DISMISS CASE  
[DPC-1](#)      Seth Hanson      7-10-19 [[22](#)]

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

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<p><b>The Motion To Dismiss is dismissed without prejudice.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 6, 2019, Dckt. 28; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Andrea Jennifer Patton (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 28, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.  
-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 7, 2019, Dckt. 112; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Walter Andrew Zwald, Jr. and Cynthia Ann Raitt-Zwald (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 112, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 14, 2019, Dckt. 23; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Valentina Morgan (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 23, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the August 21, 2019 hearing is required.

-----

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on August 14, 2019, Dckt. 56; no prejudice to the responding party appearing by the dismissal of the Motion; Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Nekeshia Nekicon Johnson (“Debtor”); the Ex Parte Motion is granted, Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion To Dismiss filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 56, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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