

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

September 7, 2022 at 9:00 a.m.

1. [22-21734-E-13](#) **JERMON WILLIAMS**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-16-22 [25]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 17 and 18, 2022. The court computes that 21 and 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: \$79.00 due on August 11, 2022.

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

The court's docket reflects that the default in payment that is the 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 an order substantially in the following form holding that:

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

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

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

2. [22-21241](#)-E-13 **JERRY HARDEMAN**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-19-22 [\[32\]](#)

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 20 and 21, 2022. The court computes that 18 and 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$78.00 due on August 15, 2022.

<p>The Order to Show Cause is sustained, and the case is dismissed.</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: \$79 due 6/15/2022; \$78 due 7/15/2022; and \$78 due 8/15/2022.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 27, 2022. 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).

On September 2, 2022, Debtor filed a late opposition. Counsel for Debtor explained the clerical error in not having it filed timely and states grounds for an opposition. The court authorizes the filing of the late opposition.

The Motion to Dismiss is xxxxxxx.

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

1. the debtor, Matthew Blair Thompson ("Debtor"), is delinquent in Plan payments to the Trustee.

DISCUSSION

Delinquent

Debtor is \$4,141.38 delinquent in plan payments, which represents multiple months of the \$2,032.02 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).

Opposition

This Bankruptcy Case was commenced on January 22, 2018, and is now more than four and one-half years into performance of the Chapter 13 Plan.

The Opposition states that Debtor will cure the default. Dckt. 119. However, it does not state how Debtor intends to cure the default, how Debtor has the financial resources to make such, and why future defaults are not expected. No evidence is provided in support of the factual assertion that Debtor can and will cure the default.

At the hearing, **XXXXXXX**

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 27, 2022. 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Mario Manuel Borrego and Christine Joy Borrego ("Debtor"), is delinquent in Plan payments to the Trustee.

DEBTOR'S OPPOSITION

Debtor filed an Opposition, via counsel, on August 15, 2022. Dckt. 150. Debtor states therein that Mr. Borrego contracted COVID twice, and a severe flu, in 2022, resulting in a reduction of income. Debtor promises to pay \$4,000.00 to Trustee prior to the hearing date. Further, the remaining \$2,000.00 owed will be paid after September 12, 2022, or, in the alternative, Debtor asks Trustee to apply insurance proceeds being held by the Trustee in the amount of \$3,845.88 which were ordered to be disbursed to Debtor at the end of the Plan. Order, Dckt. 106.

DISCUSSION

Delinquent

Debtor is \$4,975.00 delinquent in plan payments, which represents multiple months of the \$1,025.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

At the hearing, **XXXXXXXXXX**

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

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

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

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

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

5. [18-25851](#)-E-13 **ROBERT HUNTER** **MOTION TO DISMISS CASE**
 [DPC-6](#) **Peter Macaluso** **7-27-22 [125]**

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 27, 2022. 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:

1. the debtor, Robert Paul Hunter (“Debtor”), is delinquent in Plan payments to the Trustee.

DEBTOR'S OPPOSITION

Debtor filed an Opposition via counsel, on August 23, 2022. Dckt. 129. Debtor states that Debtor has diligently attempted to obtain a reverse home mortgage and/or refinance, based on equity, but completion of such has been prevented by clouded title. Upon attempting to obtain approval, Debtor discovered that Peachtree Group and the Filmore Group each have recorded Deeds of Trust against the subject properties, unbeknownst to Debtor prior to this filing, with no contact information or supporting note. Debtor requests time to file an adversary proceeding to un-cloud the title.

DISCUSSION

Delinquent

Debtor is \$8,809.99 delinquent in plan payments, which represents multiple months of the \$2,809.65 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

No Evidence For Factual Assertion

Unfortunately for Debtor, requesting time to file an adversary proceeding does not constitute evidence that resolves the Motion.

At the hearing, **XXXXXXX**

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

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

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

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

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

FINAL RULINGS

6. [21-24203-E-7](#) **MICHAEL/SHANON BENNETT** **MOTION TO DISMISS CASE**
[DPC-2](#) **Richard Kwun** **8-8-22 [76]**

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 8, 2022. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice as moot.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks to dismiss Michael Hugh Bennett and Shanon Bennett’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on August 23, 2022, however, converting the case to a proceeding under Chapter 7. Dckt. 88. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on August 23, 2022. *McFadden*, 37 B.R. at 521.

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

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

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

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

7. [19-24205-E-13](#) **MARGO SCOTT** **MOTION TO DISMISS CASE**
[DPC-4](#) **Candace Brooks** **7-27-22 [47]**

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 27, 2022. 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Margo R. Scott (“Debtor”), is delinquent in Plan payments to Trustee.

DISCUSSION

Delinquent

Debtor is \$14,630.08 delinquent in plan payments, which represents multiple months of the \$4,664.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 27, 2022. 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Ian H.C. Lane and Sara Diane Lane (“Debtor”), is delinquent in Plan payments to Trustee.

DISCUSSION

Delinquent

Debtor is \$1,888.52 delinquent in plan payments, which represents multiple months of the \$393.57 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

9. [18-20111](#)-E-13 **SHARI LAMBERT** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Chad Johnson** **7-27-22 [[93](#)]**

DEBTOR DISMISSED: 8/16/22

Final Ruling: No appearance at the September 7, 2022 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion to Dismiss as moot, the case having been dismissed.

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 27, 2022. 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Amber Marie Horton (“Debtor”), is delinquent in Plan payments to the Trustee.

DISCUSSION

Delinquent

Debtor is \$1,887.00 delinquent in plan payments, which represents multiple months of the \$433.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

11.	<u>18-27148</u> -E-13 <u>DPC-3</u>	WADE NIELSEN Michael Hays	MOTION TO DISMISS CASE 8-10-22 <u>[79]</u>
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Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 10, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

1. the debtor, Wade Scott Nielsen (“Deceased Debtor”), is deceased. Deceased Debtor’s Attorney filed a Notice of Death and Certificate of Death.

2. Deceased Debtor is delinquent in Plan payments.
3. The Plan is confirmed and no party represents the Deceased Debtor.

Attorney's Notice of Death

Deceased Debtor's Attorney filed a Notice of Death of Deceased Debtor, Dckt. 73, and a Certificate of Death, Exhibit 1, Dckt. 75, on June 9, 2022. The Notice of Death indicates Deceased Debtor's Attorney spoke with someone he believed to be the Deceased Debtor's daughters, and stated that there will be no probate as there are no assets to probate. The daughters further indicated to Trustee that the lienholders on Deceased Debtor's 5th wheel RV and 2012 Toyota Tacoma can repossess collateral after dismissal. Pursuant to Deceased Debtor's Schedule D, Dckt. 19, these are the only properties of Deceased Debtor with secured claims.

Deceased Debtor's Attorney also filed a motion to dismiss, which the Court dismissed for lack of standing.

DISCUSSION

Delinquent

Deceased Debtor is \$1,131.00 delinquent in Plan payments, which represents one month of the \$1,131.00 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).

Death of a Debtor

Under 11 U.S.C. § 1016, a Chapter 13 case may be dismissed upon death or incompetency of a debtor. This is largely due to Chapter 13 plans being dependent on the debtor's future earnings. 9 Collier on Bankruptcy P 1016.04 (16th 2021). However, if further administration is possible and in the best interest of the parties, the case may proceed and concluded in the same manner, so far as possible, as though death or incompetency had not occurred, with the court appointing a personal representative successor to the late debtor. 11 U.S.C. § 1016.

Here, no motion to substitute has been filed and there is no indication that further administration is possible as Deceased Debtors' Attorney states that Deceased Debtor's daughter indicated Deceased Debtor had no assets and there will be no probate.

A review of the Plan in this case, the only claims being paid were two secured claims and a priority tax claim. The distribution, on a small amount of general unsecured claims, is only 1%.

Unfortunately, no family member or other person has stepped up to appear as a representative for the deceased debtor. While there may be no probate, it could have been that the heirs could have protected two assets of value. Unfortunately, such possible representatives appear to have abandoned the Deceased Debtor in this case.

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

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

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

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

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

12. [19-21549-E-13](#) **PETRA/EDWARD CAMPOS** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Paul Bains** **7-27-22 [44]**

Final Ruling: No appearance at the September 7, 2022 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</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 29, 2022, Dckt. 52; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Petra Ann Campos and Edward Steven Campos (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 52, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [18-25654-E-13](#) **LARRY/DONNA HEDRICK** **MOTION TO DISMISS**
[DPC-1](#) **Mo Mokarram** **LARRY BRYANT HEDRICK**
8-10-22 [28]

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 10, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

1. the debtor, Larry Bryant Hedrick ("Deceased Debtor") has died but Trustee believes the case can continue as the joint-debtor only, Debtor Donna Marie Hedrick.

Attorney's Notice of Death

Debtor's Attorney filed a Notice of Death of Debtor on July 12, 2022. Dckt. 22. Deceased Debtor's Attorney indicates (emphasis added):

. . . Debtor, Larry Hedrick, passed away on October 5, 2021. The deceased Debtor's wife (Co-Debtor) notified Attorney Mo Mokarram this week. Co-Debtor has still been making the trustee payments each month. **There will be no substitution as the representative for or successor to the deceased Debtor.** Attached as Exhibit A is the death certificate.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event a debtor passes away in a case "pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads (In re Eads)*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in Chapter 13 dies. *Id.*

Trustee has established that further administration is possible if Debtor Donna Marie Hedrick remains as the sole debtor in this case. Debtor Donna Marie Hedrick has remained current on Plan payments, even after Deceased Debtor passed away almost one year ago. Additionally, the Plan is in the 47th month, and as such, there is roughly only one more year to complete the Plan.

Based on the foregoing, cause exists to dismiss Deceased Debtor only. The Motion is granted and the bankruptcy case shall proceed in this court as to Debtor Donna Marie Hedrick only.

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

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

The Motion to Dismiss Debtor 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 Deceased Debtor Larry Bryant Hedrick is dismissed from the case.

The bankruptcy case shall proceed as to Debtor Donna Marie Hedrick only.

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on July 27, 2022. 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Joyce Ann Bilyeu (“Debtor”), is delinquent in Plan payments.

DISCUSSION

Delinquent

Debtor is \$2,799.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

15. 17-27779-E-13 REINA MONTES MOTION TO DISMISS CASE
DPC-6 Peter Macaluso 7-27-22 [185]

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 27, 2022. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

Chapter 13 Trustee, David Cusick, (“Trustee”) seeks dismissal as debtor, Reina Carolina Montes (“Debtor”) as Debtor is delinquent in Plan payments.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on August 23, 2022. Dckt. 201. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 201, 200. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

16.	<u>22-20882</u> -E-13	PATRICIA SHERRON Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-11-22 [27]
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Final Ruling: No appearance at the September 7, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on August 12 and 13, 2022. The court computes that 25 and 26 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay \$234.00 in installment fees.

<p>The Order to Show Cause is discharged as moot.</p>
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The court having dismissed this bankruptcy case by prior order filed on August 25, 2022 (Dckt. 32), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

17. [17-28417-E-13](#) **GARRY/MICHELLE GONZALES** **MOTION TO DISMISS CASE**
[DPC-4](#) **Chad Johnson** **7-27-22 [114]**

Final Ruling: No appearance at the September 7, 2022 hearing is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), having filed an Ex Parte Motion to Dismiss the pending Motion on September 1, 2022, Dckt. 122; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Garry Chester Egea Gonzales and Michelle Castro Cala (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by The Chapter 13 Trustee, David Cusick (“Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 122, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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