IT IS SO ORDERED.

Dated: January 2, 2026

Tyson A. Crist
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
Delena Vaughan,	:	Case No. 25-31806
	:	Chapter 13
Debtor.	:	Judge Crist
	:	
	:	

ORDER DENYING MOTION TO VACATE ORDER OF DISMISSAL (DOC. 21) AND CONCERNING ATTORNEY FEES

I. Introduction

This matter is before the Court on Debtor Delena Vaughan's (the "Debtor" or "Ms. Vaughan") *Motion to Vacate Order of Dismissal and Reinstate Chapter 13 Case (Doc. 18)* (Doc. 21) (the "Motion to Vacate"), filed on October 22, 2025. The Motion to Vacate was accompanied by a 21-day notice in accordance with Local Bankruptcy Rule ("LBR") 9013-1 and was served on all creditors and parties in interest, according to the Certificate of Service. No objections or responses have been filed with the Court. However, because 11 U.S.C. § 521(i) does not give the Court discretion[1] to vacate the automatic dismissal of a Chapter 13 case for failure to file the

[1] The outcome of this case is fundamentally driven by the fact that 11 U.S.C. § 521(i), as implemented in this District, affords the Court little to no discretion to undue an automatic dismissal. This stands in contrast to the dismissal of chapter 13 cases pursuant to court order "for cause" under 11 U.S.C. § 1307(c), in which case the Court typically does

statement required under § 521(a)(1)(B)(v),[2] as further explained below, the Motion to Vacate must be denied. As other courts have observed, "§ 521(i) is a very unforgiving statute." *In re Olsen*, No. 20-20087, 2020 Bankr. LEXIS 1428, at *9 (Bankr. D. Utah June 1, 2020) (analyzing, as in this case, an unopposed motion to vacate an automatic dismissal under § 521(i) pursuant to Civil Rule 60(b)).[3]

II. Jurisdiction

This Court has subject matter jurisdiction over this Motion to Vacate pursuant to 28 U.S.C. § 1334(a) and (b) and Amended General Order No. 05-02 (Amended Standing Order of Reference) entered by the United States District Court for the Southern District of Ohio, pursuant to 28 U.S.C. § 157(a), on September 16, 2016. This is a core proceeding under 28 U.S.C. § 157(b)(2) and this Court may enter a final order within its constitutional authority given that this concerns the prior automatic dismissal of Debtor's chapter 13 case before this Court.

III. Background

On September 5, 2025 (the "Petition Date"), Ms. Vaughan, by and through counsel, filed a petition for chapter 13 bankruptcy relief (Doc. 1). On September 8, 2025, the Court entered an *Order Regarding Deficient Filing by Individual Debtor and Setting Fourteen (14) Day Deadline for Compliance; and Notice of Imminent Dismissal of Case* (Doc. 5) (the "Deficiency Order"), which notified Ms. Vaughan and her counsel that Schedules A-J (Official Forms 106A/B – J), the Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107), the Chapter 13 Statement of Your Current Monthly Income (Official Form 122C-1), Schedules C, G, and H (Official Forms 106C, 106G, and 106H), the Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106Sum), the Declaration About an Individual Debtor's Schedules (Official Form 106Dec), the Chapter 13 Attorney Compensation Disclosure Statement LBR Form 2016-1(b)), and the Verification of List of Creditors (LBR 1007-2) must be

have discretion to vacate the dismissal and reinstate a chapter 13 case pursuant to Federal Rule of Civil Procedure ("Civil Rule") 60(b), as made applicable by Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9024(a).

[2] Unless otherwise specified in this Order, all sections referenced are sections of the Bankruptcy Code.

[3] This case is also factually similar to *In re Marcott*, 545 B.R. 668 (Bankr. D.N.M. 2016), in which the Court ruled "on the motion [to vacate] based on the facts in the case record, without the need for an evidentiary hearing or briefing." *Id.* at 670.

filed within fourteen (14) days of the petition filing date and that this case may be dismissed without further notice if the Debtor failed to comply with Deficiency Order. *See* Doc. 5. Ms. Vaughan subsequently filed all the required documents except the Chapter 13 Statement of Your Current Monthly Income and the Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 122C-1). *See* Docs. 10, 11, 12, and 13.

On October 22, 2025, the 47th day after the Petition Date, at approximately 11:01 a.m. (Eastern Prevailing Time), the Clerk issued a *Notice of Automatic Dismissal Without the Entry of a Discharge* (Doc. 18) (the "Notice of Dismissal"), which stated as follows:

> Pursuant to 11 U.S.C. §521(i)(1), this case has been automatically DISMISSED, without the entry of a discharge, by operation of law for failure to file the following required document(s):
>
> - Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Official Form B122C−1)

In response to the Notice of Dismissal, Debtor filed her *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Doc. 19) (the "Chapter 13 CMI Statement") at approximately 5:05 p.m. on the same day (and signed the same day), October 22, 2025, followed by her Motion to Vacate (Doc. 21) at approximately 5:07 p.m. Thus, both the Chapter 13 CMI Statement and Motion to Vacate were filed on the forty-seventh (47th) day after the Petition Date (September 5, 2025).[4]

IV. Analysis

A. Automatic Dismissal Under Section 521(i)

Section 521(i)(1) of the Bankruptcy Code (11 U.S.C. § 101, *et seq.*) requires a debtor to "file all of the information required under subsection [521](a)(1) within 45 days after the date of the filing of the petition [or] the case shall be ***automatically dismissed*** effective on the 46th day after the date of the filing of the petition." 11 U.S.C. § 521(i)(1). In this case, the 46th day after the petition date was Tuesday, October 21, 2025, and the Debtor, by and through counsel, did not file her Chapter 13 CMI Statement (Doc. 19) until October 22, 2025, the 47th day, after the Clerk

[4] Debtor also filed her Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106Sum) (Doc. 20) on October 22, 2025. That document was not listed in the Deficiency Order as a document required by § 521(a)(1), but Official Form 122C-1 was, as further discussed in footnote 8 below.

of this Court issued the Notice of Dismissal on the 46th day, followed by the Motion to Vacate (Doc. 21). The Motion to Vacate does not contest that the Chapter 13 CMI Statement was filed after the 45th day. Instead, Debtor's counsel asserts that "[t]he failure to timely file the required document was the result of excusable oversight[5] and was not due to bad faith or disregard of Court procedures." Mot. to Vacate at 1. However, the Motion to Vacate does not further explain or detail the "excusable oversight" and does not cite any provision of the Bankruptcy Code or any Bankruptcy Rule, Local Rule, or any case law that would support vacating the automatic dismissal of this case, which Debtor does not dispute was statutorily mandated under § 521(i) due to the failure to file the Chapter 13 CMI Statement within 45 days.

As enacted through BAPCPA, § 521(i) contains four sub-parts, none of which permit a Debtor to revive a case after it has been automatically dismissed. Subsection (1) requires automatic dismissal "[s]ubject to paragraphs (2) and (4)[.]" Sub-paragraph (2) permits "any party in interest" to "request the court to enter an order dismissing the case." And sub-paragraph (4) allows the trustee to file a motion prior to expiration of the 45-day period, or such extension of time as may occur under sub-paragraphs (2) and (3), in order to stop dismissal of the case if "the debtor attempted in good faith to file all information required by subsection (a)(1)(B)(iv)[,]" which concerns payment advices. None of sub-paragraphs (2), (3), or (4) were utilized in this case prior to its automatic dismissal under sub-paragraph (1) of § 521(i) on the 46th day.

Notably, the Debtor is represented by counsel in this case[6] and there was no request made by the Debtor within the initial 45-day period, as permitted by § 521(i)(3), to extend the time to file the Chapter 13 CMI Statement. And that fact that it was filed immediately after the Notice of Dismissal indicates that the failure to timely file the document was an oversight. But § 521(i)(3) only authorizes bankruptcy courts to "allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1)" if the debtor makes a request within 45 days after the petition date. 11 U.S.C. § 521(i)(3). Therefore, because the Motion to Vacate was filed on the 47th day, § 521(i)(3) does not apply. And unlike Bankruptcy Rule 9006(b)(1)(B),

[5] Given that "excusable oversight" is not a commonly used or recognized term, the Court presumes that Debtor's counsel is referring to "excusable neglect," which is a basis to move to extend certain time periods "after the specified period expires," under the Bankruptcy Rules, a notice given under the Bankruptcy Rules, or a court order. Fed. R. Bankr. P. 9006(b)(1)(B); however, in this situation the time period and the ability to extend the time period is all governed by statute, 11 U.S.C. § 521(i)(1)-(4).

[6] Often, automatic dismissal for failure to file documents under § 521(i) arises in cases in which the debtor is pro se.

which permits extensions of time after the period expires due to excusable neglect in certain circumstances, § 521(i) contains no such provision. Thus, unless Bankruptcy Rule 9006(b)(1)(B) could be applied to permit an extension of the 45-day period when a debtor first requests an extension after the period has expired (and it cannot, as discussed below) it does not appear that this Court has any ability under the Bankruptcy Code to vacate the automatic dismissal. To do so would appear to require a change to the statute as neither the Bankruptcy Rules nor the Civil Rules can save this case in this circumstance.

B. Bankruptcy Rules 1007 and 9006

To back up and give further context, Bankruptcy Rule 1007(b)(6)(A) requires "a debtor in a Chapter 13 case" to "file a statement of current monthly income (Form 122C-1)[.]" In turn, subsection (c)(1) of Bankruptcy Rule 1007 states that "[u]nless (d), (e), (f), or (h) provides otherwise, the debtor in a voluntary case must file the documents required by . . . (b)(6) with the petition or within 14 days after it is filed." None of subsections (d), (e), (f), or (h) apply to the filing of the Chapter 13 CMI Statement under Bankruptcy Rule 1007(b)(6). But in this case, Debtor never sought to extend the deadline to file it, which was permitted by Bankruptcy Rule 1007(c)(7). For some reason, apparently "oversight," Debtor did not file her Chapter 13 CMI Statement along with her Schedules (Doc. 10), SOFA (Doc. 12), Verification of Creditor Matrix (Doc. 13), and Chapter 13 Plan (Doc. 14) on September 19, 2025, in response to this Court's Deficiency Order. Thus, not only did the Debtor (or her counsel) fail to file the Chapter 13 CMI Statement within the 14-day period provided under Bankruptcy Rule 1007(c)(1), but she (or counsel) failed to request any extensions of the deadline to do so under either Bankruptcy Rule 1007(c)(7) or § 521(i)(3) prior to dismissal of her case, and did not file the Motion to Vacate until after her case was automatically dismissed – another thirty-three (33) days after the 14th day. Accordingly, her case was potentially subject to dismissal under § 1307(c)(9); however, no motion was filed by the United States Trustee. It is curious that dismissal of a chapter 13 case could occur through two different statutory routes, for failure to file the same document—the Chapter 13 CMI Statement—but alas, that is the law. *See* Neil Berman, *"Without Thought or Conscious Intention": An Analysis of the Dismissal Standards of 11 U.S.C. § 521(i)*, 5 Norton Bankr. L. Adviser 3, at 13 (May 2006) (posing the question: "What is the purpose of the three different [§§ 521(i), 707(a), and 1307(c)(9)], but partially overlapping and interlocking, dismissal provisions?").

Bankruptcy Rule 9006(b)(1) cannot save the Debtor's case in this circumstance. As mentioned above, Debtor's counsel did not provide sufficient explanation to establish any excusable neglect for failing to file the Chapter 13 CMI Statement; however, even if they had, it would not have mattered because Bankruptcy Rule 9006(b)(1) provides that it applies "when these rules, a notice given under these rules, or a court order requires or allows an act to be performed at or within a specified period." Fed. R. Bankr. P. 9001(b)(1). In other words, it does not purport to apply when the deadline at issue is set by statute. And this is how a number of courts, including a Court in this District, have interpreted this rule. *See, e.g.*, *In re Pruitt*, 668 B.R. 850, 852-53 (Bankr. S.D. Ohio 2025) (Nami Khorrami, J.) (holding that the Court could not extend the deadline under § 362(c)(4)(B) "for excusable neglect pursuant to [Bankruptcy] Rule 9006(b)" because the "plain language does not provide the Court with authority to modify it" and "even if Bankruptcy Rule 9006(b) could be read to apply to a statutory deadline, that would risk running afoul of the provision in the Rules Enabling Act, 28 U.S.C. § 2075, prohibiting the Bankruptcy Rules from abridging, enlarging, or modifying any substantive rights." (citing *United States ex rel. Tenn. Valley Auth. v. Easement & Right-of-Way Over Certain Land in Cumberland Cnty., Tenn.*, 386 F.2d 769, 771 (6th Cir. 1967) (applying an analogous provision of Federal Rule of Civil Procedure 6(b)); *Montgomery Ward, LLC v. OTC Int'l, LTD.* (*In re Mongomery Ward, LLC*), 348 B.R. 669, 670-71 (Bankr. D.S.C. 2006) (holding that Bankruptcy Rule 9006(b) cannot be used to extend a time limit created by a provision of the Bankruptcy Code); *In re Barnes*, 308 B.R. 77, 81 (Bankr. D. Colo. 2004) (same); *In re Federated Food Courts, Inc.*, 222 B.R. 396, 398-99 (Bankr. N.D. Ga. 1998) (same); *In re Damach, Inc.*, 235 B.R. 727, 731-32 (Bankr. D. Conn. 1999) (same))); *see also In re Morgan*, No. 25-30792, 2025 Bankr. LEXIS 1496, at *6 n.1 (Bankr. N.D. Ohio June 23, 2025) (stating that "reliance on any of the Bankruptcy Rules to change that statutory timing requirement [of § 362(c)(3)(B)] would be suspect." (citing Rules Enabling Act, 28 U.S.C. § 2075; *In re Smith*, 999 F.3d 452, 456 (6th Cir. 2021) (quoting *United States v. Chavis* (*In re Chavis*), 47 F.3d 818, 822 (6th Cir. 1995) ("[A]ny conflict between the Bankruptcy Code and the Bankruptcy Rules must be settled in favor of the Code.")).

C. Post-Dismissal Relief Under Bankruptcy Rule 9023 and Civil Rule 59(e), and Bankruptcy Rule 9024 and Civil Rule 60

Again, although Debtor's counsel does not state a basis to vacate the automatic dismissal of Ms. Vaughan's chapter 13 case, the Court presumes, based on the use of the word "vacate" in

the Motion to Vacate, that Debtor is implicitly relying upon Civil Rule 60, which is made applicable to bankruptcy cases by Bankruptcy Rule 9024. The case law, however, has examined both Civil Rules 59(e) and 60 in this situation. *See, e.g.*, *In re Reyes*, No. 06-32767, 2007 Bankr. LEXIS 358 (Bankr. E.D. Tenn. Jan. 31, 2007) (analyzing Civil Rule 59 in a case in which the pro se debtor failed to file documents by the 45th day, such that the case was automatically dismissed as confirmed by a notice issued by the clerk); *In re Alfau*, No. 8-18-70983, 2024 Bankr. LEXIS 1077 (Bankr. E.D.N.Y. May 7, 2024) (denying a motion to reopen a Chapter 13 case dismissed pursuant to § 521(i), after construing the request, by a pro se debtor, to be "for substantive relief under Rules 59(e) and 60(b)"); *In re Sexton*, No. 24 B 14852, 2025 Bankr. LEXIS 62, at *6-7 (Bankr. N.D. Ill. Jan. 14, 2025) (holding that "[b]ankruptcy judges have no discretion if the documents required by § 521(a)(1) are not on the docket."). But the problem in attempting to use either Civil Rule 59 or 60 is that, in this District at least, there is no order dismissing the case. Instead, because "[s]ection 521(i)(1) does not require any action by the court or anyone else . . . [,] [m]uch like Cinderella's pumpkin at midnight . . . the magic ends and the case is automatically dismissed by operation of law on day 46." *In re Lugo*, 592 B.R. 843, 846 (Bankr. N.D. Ind. 2018) (citing *In re Fawson*, 338 B.R. 505, 510 (Bankr. D. Utah 2006); *In re Tay-Kwamya*, 367 B.R. 422 (Bankr. S.D.N.Y. 2007)). And in this case, as is customary in this District, the only document issued was the Notice of Dismissal by the Clerk of Court. Therefore, "[s]ince the dismissal is not an act or a decision of the court, there is nothing to 'reconsider' or, in the language of Rule 59, nothing to alter or amend." *In re Lugo*, 592 B.R. at 846. "Similarly, there is no order or judgment that the court can give relief from, due to some kind of mistake, surprise, or excusable neglect . . . so that the debtor can have a second chance to do things right." *Id.* (citing Fed. R. Bankr. P. 9023; Fed. R. Civ. P. 60(b)). This distinguishes the present circumstance from other chapter 13 cases in which an order of dismissal, entered on a motion to dismiss for cause such as for failure to file a plan or to make plan payments, might be vacated. *See, e.g.*, *Geberegeorgis v. Gammarino* (*In re Geberegeorgis*), 310 B.R. 61, 69-70 (B.A.P. 6th Cir. 2004) (affirming the bankruptcy court's grant of relief under Civil Rule 60(b)(6) to vacate a prior order dismissing the debtor's Chapter 13 case, due to failure to make plan payments resulting from sickness and hospitalization, to resume performance under a confirmed Chapter 13 plan); *see also In re Bonner*, 374 B.R. 62, 65 (Bankr. W.D.N.Y. 2007) (noting that "[i]n circumstances in where a matter has been dismissed pursuant to [11 U.S.C. §§ 305, 707, 930, 1112, 1208 and 1307], courts have

reinstated a case where the debtor presents a timely demonstration of good cause." (citations omitted)). "By reason of its compulsory character, section 521(i) differs from other dismissal provisions of the Bankruptcy Code." *Id.* Thus, Civil Rule 60(b) cannot provide relief from the requirements of § 521(i), or serve as a basis to override the mandatory and automatic dismissal of this chapter 13 case. *See In re Olsen*, No. 20-20087 2020 Bankr. LEXIS 1428, at *12 & n.30 (Bankr. D. Utah June 1, 2020) (collecting cases).

Accordingly, this case fits the situation in which "[t]he language of the statute is clear and simple, 'the case shall be dismissed on the 46th day' and the court has no discretion to do otherwise." *In re Lugo*, 592 B.R. at 846 & n.4. Thus, to set aside or vacate the dismissal would create an exception to § 521(i)(1) for anyone who asks for reinstatement.[7] This the Court cannot do, particularly in this situation in which the Debtor, represented by counsel, had notice of the need to file the Chapter 13 CMI Statement, through § 521(a)(1)(B)(v), Bankruptcy Rule 1007(b)(6) and (c)(1), and the Deficiency Notice entered three (3) days after the Petition Date, yet did not file it until day 47.

D. Case Law on Dismissals Under Section 521(i)

Some courts, including this one, have previously determined in analogous circumstances that there is "no basis to vacate the Congressionally mandated dismissal . . . under § 521(i)." Order Denying Mot. to Vacate Order of Dismissal (Doc. 50) and Order Other Matters at 2, *In re Crawford*, No. 25-30409 (Bankr. S.D. Ohio May 2, 2025) (Doc. 53) (citing *In re Bonner*, 374 B.R. 62, 65 (Bankr. W.D.N.Y 2007) ("Because [521(i)] allows no discretion in granting dismissal, it similarly allows no opportunity to reinstate a case.")); *see also* Order Denying Mot. to Vacate Automatic Dismissal, *In re Felix*, No. 07-30269 (Bankr. S.D. Ohio Apr. 19, 2007) (Doc. 20) (Walter, J.) (holding, in part, that § 521(i) is "clear and do[es] not allow for any judicial discretion to extend the time for filing or to vacate an automatically dismissed case except as specifically set forth in the statute" (citing *In re Fawson*, 338 B.R. 505 (Bankr. D. Utah 2006))).

[7] To run to ground any other potential avenue by which to vacate the automatic dismissal of Debtor's case, even though not cited or argued by Debtor's counsel, it is worth remembering that 11 U.S.C. § 105(a) "may not be used 'to contravene specific statutory provisions.' " *In re Pruitt*, 668 B.R. 850, 853 (Bankr. S.D. Ohio 2025) (Nami Khorrami, J.) (quoting *Law v. Siegel*, 571 U.S. 415, 421 (2014)). Overriding an automatic dismissal under § 521(i) by use of equitable power under § 105(a) would squarely run afoul of the United States Supreme Court's admonition in *Law v. Siegel*. Accordingly, there appears to be no identifiable provision of the Bankruptcy Code or Bankruptcy Rules that allows this Court to revive the Debtor's case even though it appears this may have been an oversight.

Other courts, including the Sixth Circuit Bankruptcy Appellate Panel, have found that there is discretion to not dismiss a bankruptcy case under § 521(i) when, contrary to the situation in this case, the debtor is seeking to use § 521(i) as a sword to dismiss their case to stymie recovery by creditors or the trustee. *See Simon v. Amir* (*In re Amir*), 436 B.R. 1, 25 (B.A.P. 6th Cir. 2010) (holding that "bankruptcy courts have the authority to waive § 521(a)(1)'s filing requirements if enforcing those requirements would create an abuse of the bankruptcy process."). In *Amir*, the debtor sought to dismiss his case pursuant § 521(i) because he had failed to file his payment advices under § 521(a)(1)(B)(iv). *Id.* at 22-25. The debtor employed this argument as a technical means by which to obtain dismissal of his case, "ten months after filing his case[,]" in order to preserve an asset the Trustee had sought to liquidate for the benefit of creditors. *Id.* at 25; *see also Segarra-Miranda v. Acosta-Rivera* (*In re Acosta-Rivera*), 557 F.3d 8, 14 (1st Cir. 2009) (bankruptcy court had discretion to not dismiss a chapter 7 case when "a previously hidden asset has more than enough value to cover the entire universe of creditors' claims . . ."). These cases do not apply to the present circumstance and do not stand for the proposition that a case already automatically dismissed, in which there is no "abuse of the bankruptcy process," could be revived; instead, only that courts have discretion to stop debtors from dismissing cases under § 521(i) in situations in which dismissal would hinder creditors or otherwise be "an abuse of the bankruptcy process." *In re Amir*, 436 B.R. at 25; *see also In re Lugo*, 592 B.R. at 846, n.4 (distinguishing *In re Acosta-Rivera*, 557 F.3d 8 (1st Cir. 2009); *Wirum v. Warren* (*In re Warren*), 568 F.3d 1113 (9th Cir. 2009); and *In re Amir*, 436 B.R. 1 (B.A.P. 6th Cir. 2010) from the situation in which "debtor is seeking to avoid the effect of § 521(i), not use it as a weapon against the trustee.").

Here, the Debtor did not request dismissal; rather, she is seeking to vacate the automatic dismissal that already occurred under § 521(i). And there does not appear to be any concern about abuse of the bankruptcy process—a very different situation than in *Amir*. *See* 436 B.R. at 25 (holding that "bankruptcy courts have the authority to waive § 521(a)(1)'s filing requirements if enforcing those requirements would create an abuse of the bankruptcy process.").

As with many provisions of the Bankruptcy Code that have engendered disagreement, § 521(i) was "added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ('BAPCPA')." *Amir*, 436 B.R. at 8-9 (citing *Wirum v. Warren* (*In re Warren*), 568 F.3d 1113 (9th Cir. 2009); *In re Spencer*, 388 B.R. 418 (Bankr. D. Colo. 2008); *In re Giles*, 361 B.R. 212 (Bankr. D. Utah 2007); *In re Hess*, 347 B.R. 489 (Bankr. D. Vt. 2006)).

However, it does not appear there is too much disagreement when it comes to the present situation—vacating an automatic dismissal that has already happened—at least not in a district in which it has been accepted that Official Form 122C-1 is required by § 521(a)(1)(B)(v). *See, e.g. In re Ard*, 666 B.R. 744, 751 (Bankr. D.S.C. 2025) (" '[S]ection 521 does not provide the Court discretion as to whether to dismiss a case if the debtor fails to file the documents required by section 521(a)(1) within 45 days of filing the petition, nor does it provide the Court discretion to reconsider its dismissal of the case pursuant to section 521(i).' " (quoting *In re Bundrick*, 653 B.R. 809, 814 (Bankr. D.S.C. 2023))); *In re Wallace*, 2010 Bankr. LEXIS 3098 (M.D.N.C. 2010) (observing that "[s]ection 521(i) is a component of a strict statutory regimen that was adopted when section 521 was revised by BAPCPA[,]" that this "statutory regimen does not include reinstatement of a case that has been dismissed pursuant to section 521(i)" and "is not subject to being vacated or avoided based upon a party's mistake, inadvertence or excusable neglect" and collecting cases from other districts supporting this conclusion). In short, there does not appear to be substantial disagreement that once an automatic dismissal occurs pursuant to § 521(i) the dismissal cannot be vacated, presuming that, in fact, the required document was not filed and it is not a case that involves potential abuse of the bankruptcy process.

There is a debate in the case law about whether bankruptcy courts have "discretion to waive the § 521(a)(1) filing requirements after the forty-five day filing deadline" in order to stop an automatic dismissal from happening in situations in which cases are not deemed to be automatically dismissed without a court order on the 46th day, typically when a debtor is attempting to use § 521(i) offensively. *See Warren*, 568 F.3d at 1116-17 (finding discretion to waive the § 521(a)(1) filing requirements after the forty-five day deadline of § 521(i), but in a circumstance in which the Court (or Clerk) had not yet dismissed the case and when assets may have been available in Chapter 7 case for the benefit of creditors, such that dismissal of the case could amount to an abuse). In other words, the dispute has been over whether dismissal is mandated " 'where the debtor is seeking to take advantage of . . . § 521(i) to the prejudice of his creditors.' " *Amir*, 436 B.R. at 24 (citing *In re Warren*, No. 06-10697, 2007 Bankr. LEXIS 1331, 2007 WL 1079943, at *1 (Bankr. N.D. Cal. Apr. 9, 2007)). That is not the situation here. There is no allegation of abuse of the bankruptcy process, and the Debtor is not seeking to use § 521(i) offensively; rather, Debtor is seeking to undue the statutorily mandated automatic dismissal of her case. Unfortunately, this Court does not have that discretion in this circumstance.

E. Automatic Dismissals in this District

As one last point worthy of mention, in this District dismissals have ordinarily been allowed to take effect automatically pursuant to § 521(i)(1) if any of the documents required by § 521(a)(1) are not timely filed, without the need for a court order. This is in contrast to the view of courts in other districts that a court order is required under § 521(i)(2), which seems to be rooted in a concern over the implementation of an automatic dismissal or the potential for mischief if a case is dismissed without an order, notwithstanding that the statute plainly states that "the case shall be automatically dismissed effective on the 46th day . . . ." 11 U.S.C. § 521(i)(1). There is also disagreement amongst the courts over which documents actually have to be filed; thus, which documents, when not filed, will trigger an automatic dismissal. *See, e.g.*, *In re Marcott*, 545 B.R. 668 (Bankr. D.N.M. 2016) (setting aside an order dismissing debtor's case for "failure to file a 'Chapter 13 Statement of Current Monthly Income' within 45 days of the petition date" because "the statement is not required by § 521(a)(1)" such that "the case should not have been dismissed") (cited in *In re Olsen*, No. 20-20087, 2020 Bankr. LEXIS 1428, at *9, n.25 (Bankr. D. Utah June 1, 2020)). But in this District, the established practice has been that the Clerk of Court issues a notice that the case has been automatically dismissed "by operation of law" for failure to file the required documents, which includes the Chapter 13 CMI Statement, and no court order has been required.[8] Of course, this is only after a *Notice of Imminent Dismissal of Case* (Doc. 5) was issued,

[8] Debtor has not contested that the Chapter 13 CMI Statement was required to be filed under § 521(a)(1)(B)(v). Although the Court in *Marcott* concluded that this form was not required by § 521(a)(1), that is contrary to established practice in this District. 545 B.R. at 673-675 (concluding that "§ 521(a)(1) does not require Chapter 13 debtors to file a CMI Statement. Rather, the requirement comes from Bankruptcy Rule 1007(b)(6)."). The view that minor adjustments to Schedules I and J, as amended with BAPCPA, mean that Schedules I and J are all that is required by § 521(a)(1)(B)(v), when Schedules I and J were already tied to § 521(a)(1)(B)(ii), is problematic, and that view is not shared by other courts. *See, e.g.*, *In re Turner*, 384 B.R. 852, 854-56 (Bankr. D. Colo. 2008) (concluding that "the debtor's duty to file a 'statement of the amount of monthly net income, itemized to show how the amount is calculated' which was added to section 521 by BAPCPA as subsection (a)(1)(B)(v), can only be fulfilled by filing Forms B22A, B22B or B22C." And further concluding that if § 521(a)(1)(B)(v) does not require the information called for by Official Forms B22A, B22B, or B22C, then no statute does and "[w]ithout this information, there is no way to implement the provisions of BAPCPA . . . which require that the means test and disposable income calculations be performed."). Official Form B 22C-1 was replaced by B 122C-1, effective December 1, 2015. Further, in this case the Deficiency Order lists Official Form 122C-1 as one of the "[f]orms required by 11 U.S.C. § 521(a)(1)[,]" which the Debtor did not timely file, as also required by Bankruptcy Rule 1007(b)(6). In contrast, the form Deficiency Order lists Official Form 122C-2 (Chapter 13 Calculation of Your Disposable Income, which is based on Official Form 122C-1, as an "[o]ther required form."

three days after this case was filed. And in this case, there is no dispute that, in fact, the document had not been filed within the 45-day period.[9]

There is a seemingly philosophical (or "metaphysical") disagreement amongst the courts as to whether an automatic dismissal is truly automatic, or if it nonetheless requires a court order. *See In re Olsen*, 2020 Bankr. LEXIS 1428, at *9-10 (observing that "[s]ome courts have found the idea of a truly 'automatic' dismissal—essentially a metaphysical event that occurs without court intervention . . . –to be anathema to the normal functioning of any court and at odds with the language of § 521(i)(2)"); *In re Marcott*, 545 B.R. at 671 ("Does 'automatically dismissed' mean that no dismissal order is needed?"). But reading sub-paragraphs (1) and (2) to mean that a court order is required is a stretch. Sub-paragraph (1) states in pertinent parts, and presuming that the chapter 13 debtor has not filed "all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition," that "[s]ubject to paragraph[] (2) . . . , the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition." 11 U.S.C. § 521(i)(1). In turn, sub-paragraph (2) states, in pertinent parts with exceptions not applicable to this case, that "any party in interest may request the court to enter an order dismissing the case." 11 U.S.C. § 521(i)(2). And "[i]f requested, the court shall enter an order of dismissal not later than 7 days after the request." *Id.* The language in sub-paragraph (2), however, is permissive, whereas the language in sub-paragraph (1) is mandatory. Moreover, to hold that the permissive sub-paragraph (2) request for a court order prevents the automatic dismissal from taking effect would nullify sub-paragraph (1) and would create a situation in which a case may well never be dismissed, notwithstanding the debtor's failure to file the information required by § 521(a)(1), if nobody ever moves to dismiss the case. In this regard, the Court concurs with the view that "§ 521(i)(2) merely allows for a 'comfort order' to be entered if a court does not otherwise dispose of an automatically dismissed case on its own." *In re Olsen*, 2020 Bankr. LEXIS 1428, at *10.

Apart from the debate over whether a case can be dismissed without a court order, the only other "wiggle room" afforded by § 521(a)(1) is found in subsection (B), which provides a pressure valve in the lead-in language; namely, that a court can alter the documents required to be filed by § 521(a)(1)(B) by "order[ing] otherwise." In this District the practice has been to require that

[9] The Court would have discretion to address a situation in which the issue was whether the document was or was not filed within the proscribed period under § 521(i).

Official Form 122C-1 be filed pursuant to § 521(a)(1)(B)(v), which requires "a statement of the amount of monthly net income, itemized to show how the amount is calculated[,]" which is separate and apart from Schedules I and J—the "schedule of current income and current expenditures" required by § 521(a)(1)(B)(ii). *See In re Crawford*, No. 25-30822, 2025 Bankr. LEXIS 1751, at *5-6 (Bankr. S.D. Ohio June 17, 2025). Further, in this District the Local Bankruptcy Rules note that the "preparation and filing of any document required by § 521 of the Code, including Official Form 122C-1" which is the Chapter 13 CMI Statement that Debtor, by and through counsel, failed to timely file, is part of the "general legal services performed in a chapter 13 case[.]" LBR 2016-1(b)(2)(A)(iii). The Debtor, by and through counsel, does not dispute that the Chapter 13 CMI Statement was a document required to be filed within 45 days by § 521(a)(1). And this Court had no reason, or request before it, to "order otherwise" in this case, before this case was dismissed. Thus, as Debtor acknowledges in the Motion to Vacate, Debtor's case was automatically dismissed on day 47 due to failure to file the Chapter 13 CMI Statement, after ample notice (and being represented by counsel).

V. Conclusion

After a review of § 521 and the case law, this Court has been unable to identify a basis upon which it could vacate the prior automatic dismissal of this chapter 13 case consistent with the statutory scheme of § 521 post-BAPCPA, which does not provide any opportunity to challenge an automatic dismissal after it has occurred. Accordingly, for the foregoing reasons, the *Motion to Vacate Order of Dismissal and Reinstate Chapter 13 Case (Doc. 18)* (Doc. 21) is hereby **DENIED**, and this case shall remain dismissed. Nothing in this Order, however, precludes Ms. Vaughan from filing another bankruptcy case.

Finally, given that the failure to file the Chapter 13 CMI Statement, which is part of the legal services to be performed in a chapter 13 case in this District, was the demise of this case, the Court will issue a separate order scheduling a hearing to determine whether the attorney fees paid by Ms. Vaughan to Cope Law Offices, LLC prior to the filing of this case were reasonable and necessary under 11 U.S.C. §§ 329(b) and 330 for the services rendered; however, to the extent that Debtor retains the same counsel to file another Chapter 13 case, said case is filed, and counsel gives the Debtor credit for all funds already paid to counsel for this case toward the new case (while not increasing the total amount counsel would normally charge for this type of Chapter 13

case), and counsel files a report of the same in this case, then the Court may determine to cancel the hearing.

IT IS SO ORDERED.

Copies to:

All Creditors and Parties in Interest