

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. [17-27202-E-13](#) **CRYSTAL JOHNSON** **MOTION TO DISMISS CASE**
DPC-1 **Pro Se** **12-20-17 [36]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 20, 2017. 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 (*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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) alleges that Crystal Johnson (“Debtor”) 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).

The Chapter 13 Trustee argues that Debtor did not commence making plan payments and is \$25.00 delinquent in plan payments, which represents one month of the \$25.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not list any creditor by name on her schedules, even though several listings show “TBD.” The Master Address List shows Debtor, the Chapter 13 (incorrectly), an apartment complex, and an attorney at the apartment complex.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 40. Debtor argues that all the required documents and schedules have been filed. *Id.* (citing Dckts. 21–23). Debtor claims that there is no delinquency according to her pleadings, and she argues that she has complied fully with the Federal Rules of Bankruptcy Procedure.

Debtor argues that missing the first Meeting of Creditors is not a problem because the report from the meeting indicates that it could be continued to another date, which has now been set for January 25, 2018. Debtor argues that the Motion should be denied.

RULING

Unfortunately for Debtor, her arguments are not convincing. A review of Debtor’s Plan and Schedules show that they are largely incomplete and do not evidence a debtor who is prosecuting this case in good faith.

Additionally, in Debtor’s Opposition, she does not dispute that she did not attend the first Meeting of Creditors and offers no reasonable explanation. Debtor has not provided required documents to the Chapter 13 Trustee, has not truly disclosed her creditors, and has not filed a motion to confirm for her plan.

The proposed Chapter 13 Plan provides for only a \$25.00 per month plan payment. Dckt. 21. For creditors, the Plan states that Class 1 claims are “NA,” Class 2 claims are “NA,” Class 3 claims are “NA,” Class 4 Claims are “NA,” and Class 5 claims are “NA.” For Class 6 claims, it states “Refer to Schedule E-F,” and for Class 7 claims are a 0.00%, and there will be a 0.00% dividend. *Id.*

The court has reviewed the Schedules filed by Debtor under penalty of perjury in this case. Dckt. 23. On Schedule A/B, Debtor states:

- A. She owns no real property.
- B. She has a car of a make “TBD.”
- C. She has no electronics, such as a TV or radio.
- D. She has a “TBD” checking account and a “TBD” savings account at unidentified financial institutions.
- E. For financial assets not otherwise listed on Schedule A/B, Debtor state that such assets are “TBD.”

Schedule A/B, Dckt. 23.

On Schedule C, Debtor does not list any assets to be exempt in this case. *Id.* On Schedule D, Debtor states she has no creditors with secured claims. *Id.* at 15. On Schedule E/F, Debtor states she has no creditors with priority unsecured claims. *Id.* at 18. For general unsecured claims, she lists several “creditors” as “TBD,” with no dollar amounts listed for any such claims of “TBD” creditors. *Id.* at 21.

On Schedule I, Debtor does not state whether she is employed, states that her occupation is “NA,” and does not list any employer. *Id.* at 28. However, Debtor states that she has gross wages of \$1,900 per month. *Id.*

On Schedule J, Debtor states she has no expenses for housing or utilities. *Id.* at 30–31. Debtor further states that she has \$250 in transportation expenses and \$350 per month in vehicle insurance expenses, but she does not list any vehicles on Schedule A/B. *Id.* at 31.

On the Statement of Financial Affairs, Debtor states that she has no income from employment or income from any other source in 2017, 2016, or 2015. Statement of Financial Affairs Questions 4 and 5, Dckt. 23.

Cause exists to dismiss this case. While filing papers with the court, they are devoid of significant information concerning assets. They are drafted to allude to assets, but not to provide clear disclosure under penalty of perjury. On the one hand, Debtor purports to have some monthly income from an unidentified source, and on the other hand, states she has no income.

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.

Debtor has also not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Finally, Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

NOVEMBER 1, 2017 HEARING

At the hearing, the court noted that Debtor had requested a continuance due to a connection to fires in Santa Rosa. Dckt. 26. The court reviewed Debtor's pleadings and his prior cases and discussed with him numerous deficiencies that exist in this case. Debtor argued that he wants to be represented by counsel, and to afford Debtor time to obtain counsel, the court continued the hearing to 10:00 a.m. on January 17, 2018. Dckt. 28.

The court noted that there appear to be significant assets (in the form of vehicles) in this case, and the court stated that at the continued hearing the court would consider whether dismissal or conversion was appropriate. Dckt. 26.

DISCUSSION

Since the November 1, 2017 hearing, Debtor does not appear to have acquired legal counsel for this case. Instead, Debtor continues in attempting to prosecute this case without legal support. The outcome of that decision now may lead to dismissal of this case.

On November 7, 2017, Debtor filed an Amended Plan and two declarations, but he did not serve the plan on any party, did not set a hearing date for the plan, and did not file a motion to confirm the amended plan. *See* Dckts. 33–35. The Chapter 13 Trustee filed a Notice of Confirmation Procedures that informed Debtor of the deficiencies in his pleadings. Dckt. 36.

The proposed Amended Chapter 13 Plan, ¶¶ 1.01 and 1.02, (Dckt. 33) provides for a \$750.00 per month plan payment for sixty months. For the Class 1 Claims, the only identified creditor is “CHASE,” for which the monthly payment is stated to be \$378.00, and there is a \$12,000.00 arrearage to be cured, but no arrearage cure payment is provided in the Plan. The \$12,000.00, if repaid over sixty payments, would be \$200.00 per month additional payments. *Id.* ¶ 2.08(c).

For the Class 2 Claims, Debtor lists Apollo Auto Finance, with a \$12,000.00 claim to be paid over sixty months with 10% interest. Using the Microsoft Excel Loan Calculator, the court computes this provided-for claim to require a \$254.96 per month payment through the Plan.

For Class 5, priority unsecured claims, Debtor lists “Bob’s Towing” with a \$7,570.00 claim. If paid over the sixty months of the Plan, with no interest, this would require an additional monthly payment of \$126.17.

It appears that the required payments as stated in the Plan would require \$959.13 to pay these claims. Debtor is also required to fund the Chapter 13 Trustee administrative expenses, which computed at 8% would be an additional \$77.00 per month, pushing the required monthly plan payment to at least \$1,036.00. The \$750.00 per month provided for in the Plan would be insufficient to fund the Plan as stated by Debtor.

On December 11, 2017, Debtor filed a Motion to Confirm, along with a notice of hearing and a proof of service. Dckts. 46–48. There are additional deficiencies in those pleadings. First, the Notice of Hearing does not list a date or time for the confirmation hearing. Dckt. 47. Instead, it states that both the date and time are “TBD.” *Id.* The court issued a Memo to File re: Calendar Correction that instructed Debtor to set a time and date for the confirmation hearing, and that Memo was served on Debtor on December 13, 2017. Dckts. 49, 50.

Second, the Motion to Confirm does not state any grounds with particularity (Federal Rule of Bankruptcy Procedure 9013), nor does it reference any of the applicable rules for Chapter 13. In its entirety, the Motion states:

I, Byllie Dee, debtor, hereby petition the Court to confirm debtor’s plan.

Debtor is filing this motion in accordance with Local Rule 9014-1, any other applicable Local Rules, and the applicable provisions of 11 U.S.C. §521(i)(3)[.]

Dckt. 46.

No declaration is filed in support of the Motion.

Debtor does not appear to be able to prosecute this case in good faith. While stating to the court that he desired legal representation, no attorney has been substituted into this case as Debtor’s counsel. He continues to prosecute this case himself, with numerous deficiencies in his pleadings that prevent him from getting a plan confirmed.

On his Petition, Debtor states that he has also used the name James Larson in the past eight years. When checking the court’s files for other cases by Byllie Williams, using his Social Security Number, the search does not disclose any other cases.

On his Petition, Debtor states that he has had three prior cases in the last eight years in the Northern District of California—4:16-bk-42054, 4:15-bk-42180, and 4:15-43169. The court discusses these cases in the Civil Minutes for the prior hearing on the Motion. Dckt. 26. After reviewing those cases and Debtor’s conduct in this case, the court stated:

“Though Debtor’s efforts in this case appear questionable, the court will afford Debtor the opportunity to obtain the counsel which he said he desires. Because of the apparently high value vehicles which are in, or are purported to have transited through, the Debtor and the various bankruptcy estate, the court will consider

whether dismissal or conversion is the proper relief to be granted pursuant to this Motion if the Debtor fails in the prosecution of this case in good faith.”

Civil Minutes, p. 4, Dckt. 26.

Motion for Relief from Stay

On January 10, 2017, Shellpoint Mortgage Servicing, as the servicing agent for MTGLQ Investors, L.P., filed a Motion for Relief from the Automatic Stay, including relief pursuant too 11 U.S.C. § 362(d)(4). Dckt. 54. The allegations in that motion are that Debtor has engaged in a series of multiple bankruptcy filings as a scheme to defraud, hinder or delay that creditor from enforcing its rights against the collateral that secures it claim. The hearing on that Motion is set for 10:00 a.m. on February 8, 2017.

With that Motion for Relief from the Stay pending, the court continues the hearing on this Motion to Dismiss to afford Debtor the opportunity to continue in his efforts to engage counsel to try to effectively enforce his rights. FN.1.

FN.1. Though the court could grant this Motion to Dismiss and subsequently exercise post-dismissal federal court jurisdiction to address the 11 U.S.C. § 362(d)(4) issues, the better practice is to continue the hearing on the motion to dismiss to coincide with the hearing on 11 U.S.C. § 362(d)(4) to allow the debtor to fully appreciate the significance of the relief that may be granted pursuant to the creditor’s motion.

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 David Cusick (“the Chapter 13 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 10:00 a.m. on February 21, 2017.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Carol Guenther is \$4,850.00 delinquent in plan payments, which represents multiple months of the \$2,150.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 27. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [13-35706-E-13](#) **ARRON/FELICIA CARRILLO** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **12-18-17 [49]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Arron Carrillo and Felicia Carrillo are \$1,850.00 delinquent in plan payments, which represents multiple months of the \$755.00 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’S OPPOSITION

Debtor filed an Opposition on December 29, 2017. Dckt. 53. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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.

6. [15-24309-E-13](#) **KAREN PACOL** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **12-15-17 [78]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Karen Pacol is \$4,000.00 delinquent in plan payments, which represents multiple months of the \$3,100.00 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’S OPPOSITION

Debtor filed an Opposition on December 29, 2017. Dckt. 82. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. No such motion has been filed to confirm a modified plan. 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 David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. **16-25610-E-13** **PAUL FERNANDES** **MOTION TO DISMISS CASE**
DPC-3 **Kristy Hernandez** **12-19-17 [129]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Paul Fernandes (“Debtor”) is \$16,760.79 delinquent in plan payments, which represents multiple months of the \$5,643.93 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’S REPLY

Debtor filed a Reply on January 3, 2018. Dckt. 133. Debtor promises to cure the delinquency or file a modified plan, instead, before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay and/or modify a plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [16-25115-E-13](#) **ANTHONY BORTKO** **MOTION TO DISMISS CASE**
DPC-2 **Candace Brooks** **12-19-17 [34]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Anthony Bortko (“Debtor”) is \$4,526.00 delinquent in plan payments, which represents multiple months of the \$2,263.00 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’S RESPONSE

Debtor filed a Response on January 3, 2018. Dckt. 38. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jennifer Munoz (“Debtor”) is \$1,200.00 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).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 38. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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.

10. [16-25419-E-13](#) **ANTHONY/AMALIA AITKEN** **MOTION TO DISMISS CASE**
DPC-3 **Bruce Dwiggin** **12-19-17 [71]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Anthony Aitken and Amalia Aitken (“Debtor”) are \$7,235.00 delinquent in plan payments, which represents multiple months of the \$1,933.22 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’S RESPONSE

Debtor filed a Response on January 3, 2018. Dckt. 75. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [17-25320-E-13](#) **DAVID/KIMBERLY TREXLER** **MOTION TO DISMISS CASE**
DPC-2 **Eric Schwab** **1-3-18 [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.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 3, 2018. By the court’s calculation, 14 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 -----.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that David Trexler and Kimberly Trexler (“Debtor”) are \$4,234.00 delinquent in plan payments, which represents multiple months of the \$2,453.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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 October 17, 2017. 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).

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 David Cusick ("the Chapter 13 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. [17-24936-E-13](#) **DANIEL ARANA** **MOTION TO DISMISS CASE**
DPC-1 **Mark Shmorgan** **12-18-17 [15]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 18, 2017. 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.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Daniel Arana ("Debtor") is \$2,338.00 delinquent in plan payments, which represents one month of the \$2,338.00

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'S RESPONSE

Debtor filed a Response on December 21, 2017. Dckt. 19. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [16-26838-E-13](#)
DPC-1

KATRINA CULVERSON
Scott Hughes

MOTION TO DISMISS CASE
12-20-17 [60]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 20, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Katrina Culverson (“Debtor”) is \$6,507.60 delinquent in plan payments, which represents multiple months of the \$3,262.95 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’S OPPOSITION

Debtor filed an Opposition on January 2, 2018. Dckt. 64. Debtor explains that she did not receive retirement pay for two months during summer 2017, and then in September 2017, she had numerous expenses for repairing her vehicle. Debtor promises to pay \$3,265.00 on December 29, 2017; \$3,265.00 on January 15, 2018, and then bring the payments current by March 25, 2018.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [17-21838-E-13](#) **WILLIAM/MELISA MUELLER** **MOTION TO DISMISS CASE**
DPC-1 **Mohammad Mokarram** **12-15-17 [19]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that William Mueller and Melisa Mueller (“Debtor”) are \$400.00 delinquent in plan payments, which represents multiple months of the \$250.00 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’S REPLY

Debtor filed a Reply on January 3, 2018. Dckt. 23. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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 September 19, 2017. 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).

NOVEMBER 1, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 17, 2018. Dckt. 115. The court directed that opposition be filed by January 3, 2018, with any replies filed by January 10, 2018.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on January 9, 2018. Dckt. 116. The Chapter 13 Trustee reports that Debtor has not filed an amended plan and set it for hearing. The Chapter 13 Trustee notes that the delinquency, under the prior plan, has been cured, however.

RULING

A review of the docket shows that a modified plan has not been proposed since the November 1, 2017 hearing, and no plan is pending confirmation. 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 David Cusick ("the Chapter 13 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. [17-21345-E-13](#)
DPC-3

WILLIAM MCDANIELS JR.
Richard Jare

MOTION TO DISMISS CASE
12-7-17 [88]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2017. By the court's calculation, 41 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.

David Cusick ("the Chapter 13 Trustee") argues that William McDaniels, Sr., ("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 October 24, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S "PRELIMINARY" OPPOSITION

Debtor filed an Opposition (styled as a "Preliminary Opposition") on January 3, 2018. Dckt. 92. Debtor's Counsel relates that "[a] form has been made available to the Debtors to fill out and sign as evidence in support of the opposition." *Id.* Debtor's Counsel admits freely that he has "no evidence in opposition" to present to the court, though. He merely wants the pleading to act as a "placekeeper for a more proper opposition."

RULING

Unfortunately for Debtor, a new plan has not been proposed, and what Debtor's Counsel has submitted has no legal effect to prevent the Motion from being granted. 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.

18. [17-24652-E-13](#) GERALDINE DEGUZMAN
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-20-17 [\[47\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 22, 2017. The court computes that 56 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 November 14, 2017.

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

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

19.

[17-24652-E-13](#)
DPC-3

GERALDINE DEGUZMAN
Pro Se

MOTION TO DISMISS CASE
11-13-17 [43]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 13, 2017. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") asserts that Geraldine DeGuzman ("Debtor") did not properly serve the Amended Plan on all interested parties and has yet to file a motion to confirm the Amended Plan. The Amended Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Amended Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee seeks dismissal of the case on the basis that Debtor is \$60.00 delinquent in plan payments, which represents less than one month of the \$95.00 plan payment. Before the hearing, another two plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee reports that Debtor failed to disclose on the petition the following prior bankruptcy case:

- A. Case No. 09-40543
 - 1. Date Filed: September 24, 2009
 - 2. Chapter: 13
 - 3. Date Dismissed: October 29, 2009
 - 4. Reason for Dismissal: Failure to file documents

Debtor was required to report any bankruptcy cases filed within the previous eight years. Debtor filed an Amended Petition that discloses the prior bankruptcy case. Dckt. 34.

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 David Cusick (“the Chapter 13 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.

20.	<u>17-26752-E-13</u>	ROXANNE PRIDE Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-15-17 [18]
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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:

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 November 17, 2017. The court computes that 61 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 November 14, 2017.

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 a minute order substantially in the following form holding that:

22.

[17-26752-E-13](#)
DPC-2

ROXANNE PRIDE
Pro Se

MOTION TO DISMISS CASE
12-4-17 [\[24\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 4, 2017. By the court's calculation, 44 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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") argues that Roxanne Pride ("Debtor") did not commence making plan payments and is \$484.00 delinquent in plan payments, which represents one month of the \$484.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

23. [16-27855-E-13](#) **FARENZO HANNON AND** **MOTION TO DISMISS CASE**
DPC-2 **DIAMOND JOHNSON-HANNON** **12-18-17 [45]**
Justin Kuney

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Farenzo Hannon and Diamond Johnson-Hannon (“Debtor”) are \$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).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 49. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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.

24. [13-31957-E-13](#) **WILLIAM ADAMS** **MOTION TO DISMISS CASE**
DPC-2 **Bruce Dwiggins** **12-18-17 [47]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that William Adams (“Debtor”) is \$2,700.00 delinquent in plan payments, which represents multiple months of the \$1,020.00 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'S RESPONSE

Debtor filed a Response on January 3, 2018. Dckt. 51. Debtor explains that he resides in a complete care facility in Idaho and that his finances are handled by the facility manager. Debtor states that he has impressed upon the manager in the past how important sending monthly payments is, instead of sending quarterly payments. Debtor argues that he once again has emphasized that point to the manager.

Debtor promises to cure the delinquency by the hearing.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [15-24266](#)-E-13
DPC-2

GLORIA WELLINGTON
Peter Macaluso

MOTION TO DISMISS CASE
12-15-17 [45]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Gloria Wellington (“Debtor”) is \$5,200.00 delinquent in plan payments, which represents multiple months of the \$2,600.00 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’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 49. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [16-26966-E-13](#) **JENNIFER RIANDA** **MOTION TO DISMISS CASE**
DPC-4 **Lucas Garcia** **12-15-17 [82]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jennifer Rianda (“Debtor”) is \$19,934.20 delinquent in plan payments, which represents multiple months of the \$11,233.55 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’S REPLY

Debtor filed a Reply on January 3, 2018. Dckt. 86. Debtor promises to cure the delinquency by January 25, 2018. Debtor explains that she and her non-filing spouse had a slow financial quarter at the end of 2017, as well as having an employee who needed to take a temporary medical leave.

Although anticipating being current by January 25, 2018, Debtor requests that court provide sixty days for Debtor to cure the delinquency or to file a modified plan.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 88. He argues that there is no dispute about the delinquency. The last payment received was for \$7,500.00 on December 27, 2017, and the current amount delinquent is \$23,667.75.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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.

27. [15-27773-E-13](#) **KATE KERNER** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **12-18-17 [68]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2018. 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kate Kerner (“Debtor”) is \$4,918.99 delinquent in plan payments, which represents multiple months of the \$2,792.11 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’S OPPOSITION

Debtor filed an Opposition on December 29, 2017. Dckt. 72. Debtor promises to cure the delinquency before the hearing date.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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. [17-27477-E-13](#) LORI TYLER
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-30-17 [20]**

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 (*pro se*), Chapter 13 Trustee, and Creditors as stated on the Certificate of Service on December 2, 2017. The court computes that 46 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$31.00 due on November 16, 2017.

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

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$31.00.

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.

29. [17-27477-E-13](#) LORI TYLER
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [27]**

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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 20, 2017. The court computes that 28 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 December 13, 2017.

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

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

30.

[16-23279-E-13](#)
DPC-4

SANDRA PENNIX
Michael Benavides

MOTION TO DISMISS CASE
12-15-17 [49]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Sandra Pennix (“Debtor”) is \$1,338.00 delinquent in plan payments, which represents multiple months of the \$669.00 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’S OPPOSITION

Debtor filed an Opposition on December 30, 2017. Dckt. 53. Debtor believes that the delinquency can be cured before the hearing, but Debtor does not actually state that it will be cured.

RULING

Unfortunately for Debtor, the statements in the Opposition are not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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.

31. [17-25480-E-13](#) **MITCHELL LOGAN** **MOTION TO DISMISS CASE**
DPC-3 **Lucas Garcia** **12-4-17 [30]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 4, 2017. By the court’s calculation, 44 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mitchell Logan (“Debtor”) is \$750.00 delinquent in plan payments, which represents one month of the \$750.00 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).

The Chapter 13 Trustee’s Motion argues that 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 October 24, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on January 3, 2018. Dckts. 34, 38. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 34, 36. 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.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 42. The Chapter 13 Trustee argues that Debtor remains delinquent under the terms of the Amended Plan. Additionally, Debtor used the prior plan form that is now outdated.

RULING

While the court could continue this hearing for Debtor to file an amended plan that uses the correct form, cause remains to dismiss this case because the Amended Plan that Debtor has proposed does not cure the delinquency in plan payments. 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 David Cusick ("the Chapter 13 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Manuel Madrid, Jr., and Virginia Madrid (“Debtor”) are \$2,802.18 delinquent in plan payments, which represents multiple months of the \$964.00 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’S RESPONSE

Debtor filed a Response on January 3, 2018. Dckt. 64. Debtor states that \$1,883.09 was paid on December 30, 2017, and that the remaining \$1,883.09 will be paid before January 12, 2018. Debtor promises to cure the delinquency fully before the hearing date.

RULING

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

34. [17-26984-E-13](#) MELE VILINGIA
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-27-17 [34]**

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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 29, 2017. The court computes that 19 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 December 22, 2017.

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

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

35.

[17-26984-E-13](#)
DPC-2

MELE VILINGIA
Pro Se

MOTION TO DISMISS CASE
12-7-17 [\[29\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 7, 2017. By the court's calculation, 41 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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") argues that Mele Vilingia ("Debtor") did not commence making plan payments and is \$300.00 delinquent in plan payments, which represents one month of the \$300.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee alleges that Debtor 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).

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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:

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 (former) Attorney, and Office of the United States Trustee on January 3, 2018. By the court’s calculation, 14 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 -----.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Ronnie Davis (“Debtor”) is \$7,263.76 delinquent in plan payments, which represents multiple months of the \$3,631.88 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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 October 17, 2017. 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).

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:

39. [17-25491-E-13](#) KATHLEEN HILL
George Burke

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
12-26-17 [39]

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 December 28, 2017. 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: \$77.00 due on December 19, 2017.

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

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

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 (*pro se*) and Office of the United States Trustee on November 7, 2017. By the court’s calculation, 71 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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Michael Hitchcock (“Debtor”) did not commence making plan payments and is \$405.08 delinquent in plan payments, which represents one month of the \$405.08 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 David Cusick (“the Chapter 13 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.

41. [13-29395](#)-E-13 **FRANK/GRACE MURPHY** **MOTION TO DISMISS CASE**
DPC-9 **Chad Johnson** **12-15-17 [119]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Frank Murphy and Grace Murphy (“Debtor”) are \$3,255.00 delinquent in plan payments, which represents multiple months of the \$1,091.00 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’S RESPONSE

Debtor filed a Response on December 29, 2017. Dckt. 123. Debtor promises to cure the delinquency before the hearing date.

RULING

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 14, 2017. 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 (*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 Motion to Dismiss is granted, and the case is dismissed.

David Cusick ("the Chapter 13 Trustee") reports that Jennifer Mize ("Debtor") failed to disclose on the petition the following four prior bankruptcy cases:

- A. Case No. 16-26710
 - 1. Date Filed: October 7, 2016
 - 2. Chapter: 13
 - 3. Date Dismissed: December 15, 2016
 - 4. Reason for Dismissal: Ineligibility under 11 U.S.C. §109(g)

- B. Case No. 16-23636
 - 1. Date Filed: June 2, 2016
 - 2. Chapter: 13
 - 3. Date Dismissed: July 26, 2016
 - 4. Reason for Dismissal: Failure to pay installment fees

- C. Case No. 15-25895
 - 1. Date Filed: July 27, 2015
 - 2. Chapter: 13
 - 3. Date Dismissed: August 14, 2015
 - 4. Reason for Dismissal: Failure to timely file documents

- D. Case No. 15-24451
 - 1. Date Filed: June 1, 2015

2. Chapter: 13
3. Date Dismissed: June 19, 2015
4. Reason for Dismissal: Failure to timely file documents

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p.3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, or districts. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

The Chapter 13 Trustee alleges that Debtor 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).

The Chapter 13 Trustee argues that Debtor did not commence making plan payments and is \$200.00 delinquent in plan payments, which represents one month of the \$200.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor's Plan is blank and does not list any creditor to receive any disbursement in any class. 11 U.S.C. § 1325(a)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 David Cusick ("the Chapter 13 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.

44. [16-21786-E-13](#) **EVELIA MARQUEZ** **MOTION TO DISMISS CASE**
DPC-1 **Mohammad Mokarram** **12-18-17 [17]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) asserts that Evelia Marquez (“Debtor”) failed to provide for the priority claim of Stockton Plaza Partners, LLC, (“Creditor”) which has a claim for \$2,850.00 in priority unsecured debt. Proof of Claim 11, filed on July 18, 2016. A Notice of Filed Claims was filed on November 9, 2016, listing the claim as priority not provided for in the Plan and indicating that a motion to modify was required. Dckt. 15.

DEBTOR’S REPLY

Debtor filed a Reply on December 29, 2017. Dckt. 21. Debtor argues that the priority amount claimed by Creditor is disputed. Debtor argues that the alleged claim entitled to priority is Creditor’s third claim. Debtor argues that the first claim correctly did not include any priority claim amount because the lease agreement for the claim is for commercial property.

Debtor states that counsel contacted Creditor requesting that the claim be amended to \$0.00 claimed as priority.

RULING

A review of the claims filed in this case shows that Claim No. 11 has not been amended, and Creditor asserts a priority claim still. The “Short Term Lease” attached to Claim No. 11 describes 3,040 square feet of space in a shopping center that was leased from Stockton Plaza Partners, LLC to TPV Enterprises, Inc., DBA Taqueria Pancho Villa. That lease was executed by Debtor “c/o” the business. No business name is listed on Debtor’s petition that matches the names on the lease.

11 U.S.C. § 507(a)(7) states (in part) that priority is available to an unsecured claim in connection with the lease of property for personal or family use before the commencement of the case that was not delivered or provided, with such claim not to exceed \$2,850.00. Creditor claims \$2,850.00. The lease property here, however, appears to be for commercial land, not for personal use.

Debtor has not filed an objection to the claim, but merely argues that it should not be what has been filed. It is settled law in the Ninth Circuit that the allegations of the proof of claim are taken as true and *prima facie* establish the claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, COLLIER ON BANKRUPTCY § 502.02, at 502-22 (15th ed. 1991)).

The Proof of Claim remains on file, and the Plan does not provide for it. While Debtor may disagree with the Proof of Claim, Debtor does not object to it.

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

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

45. [12-25308-E-13](#)
DPC-2

RAYMUNDO/SANDRA
VALTIERRA
Timothy Walsh

MOTION TO DISMISS CASE
12-18-17 [72]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. 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 as to Raymundo Valtierra, Jr.

David Cusick (“the Chapter 13 Trustee”) moves for the court to dismiss this case as to the deceased debtor Raymundo Valtierra, Jr. (“Deceased Debtor”) because a Motion for Omnibus Relief upon Death of Debtor was denied and has not been refiled. The Plan has been completed in this case, and the Chapter 13 Trustee has filed his Final Report and Account.

If this Motion to Dismiss is denied, then the Chapter 13 Trustee intends to propose an order approving the Final Report and Account.

DECEASED DEBTOR’S OPPOSITION

Deceased Debtor filed an Opposition on December 27, 2017. Dckt. 76. Deceased Debtor’s counsel begins by arguing that Deceased Debtor cannot be served properly and cannot defend against this Motion. However, it appears that counsel for Deceased Debtor believe that Deceased Debtor can “personally” adjudicate legal and factual issues in this court.

Deceased Debtor argues that the only hindrance to discharge is filing the 1328 Certificate, which he argues can be done by Sandra Valtierra (“Joint-Debtor”). Deceased Debtor argues that after denial of the omnibus motion, Deceased Debtor has evaluated amending the schedules and plan, but he states that more time would be needed because Joint-Debtor will have “to prepare an extensive self audit, to go back two years to obtain records.” *Id.* at 76.

Deceased Debtor argues that this Motion is not warranted, and instead, he argues that the proper remedy would be to close this case without granting a discharge to Deceased Debtor. Alternatively, Deceased Debtor argues for patience while Joint-Debtor prepares sufficient records for a new omnibus motion.

Deceased Debtor and Joint Debtor request a continuance of sixty days to present another omnibus motion for relief.

CHAPTER 13 TRUSTEE’S REPLY

The Chapter 13 Trustee filed a Reply on January 4, 2018. Dckt. 79. He argues first that service was provided to the address of record and that there was no problem with service of the Motion. (This appears to accepted Deceased Debtor’s contention that “he” can be a real party in interest to adjudicate matters in federal court.) Second, he argues that Deceased Debtor and Joint-Debtor are not attempting to resolve their complaint about the 1328 Certificate. The prior motion for omnibus relief was denied in November 2017, and while the Chapter 13 Trustee is not opposed to providing more time for a new motion, he urges that a particular deadline should be set, instead of the indefinite length that has occurred so far.

The Chapter 13 Trustee argues that filing this Motion was not “misguided” because Federal Rule of Bankruptcy Procedure 1016 provides that a case may be dismissed or administered if possible and in the best interest of parties. The Chapter 13 Trustee argues that Deceased Debtor has not considered that if no determination is made about whether to continue the case, then the case should be dismissed.

Approximately 106 days have passed since the Notice of Death was filed on September 21, 2017, which itself was filed 628 days after Deceased Debtor passed away on January 12, 2016. The Chapter 13 Trustee notes that Federal Rule of Civil Procedure 25(a) calls for dismissal if a motion is not filed within ninety days filing a notice of death.

RULING

As the court reviewed in detail at the November 21, 2017 hearing, Joint-Debtor has demonstrated that she cannot continue on in administration of this case for Deceased Debtor. Dckt. 70. Her financial information indicates that as much as \$1,300.00 may have been available each month throughout most of the Chapter 13 Plan. *See id.* The court denied the prior motion for omnibus relief without prejudice, but Joint-Debtor has not filed a new motion in the two full months’ time that has passed since then.

While Joint-Debtor’s counsel argues that she needs more time, she has not presented any explanation for why she has delayed presenting a new motion so far. Joint-Debtor fails (or refuses) to provide any testimony concerning how she has been diligently prosecuting a new motion to have a personal representative appointed for the Deceased Debtor, the headway she has made in assembling accurate financial information, and what “challenges” exist to providing the court with such accurate information.

As this court has previously discussed, it appears that Joint Debtor’s approach is that the accuracy of financial information is irrelevant in these proceedings:

“Joint Debtor filed a second Supplemental Declaration (entitled "Additional Declaration") on November 7, 2017. Dckt. 68. Joint Debtor states that she has spoken with her counsel and with the Chapter 13 Trustee’s office and has filed the second Supplemental Declaration in response to those conversations. Joint Debtor clarifies that she filed Amended Schedules I & J, but the expenses on Amended Schedule J have not changed since the case was filed in 2012.

Joint Debtor states that her listed expenses have not changed because "the figures are forever changing, [and] it is all estimate, and sometimes based upon ‘wishful thinking.’" *Id.* at 2:1–2. Joint Debtor then argues that what she lists on Schedule J now is irrelevant anyway "because the time for payments has already passed." *Id.* at 2:6.

Joint Debtor believes that no one wants to argue about what her power bill costs and what she spends on food and gasoline, and she prefers to just leave those numbers as they have been listed. *Id.* at 2:7–8. She argues that what has been reported is an accurate and generalized representation of her finances in this case, though.

. . .
With respect to the "financial information," Debtor and Debtor’s counsel appear to admit that the numbers used on Schedule J are made up, this Debtor being unable to provide an accurate estimation of the actual, truthful, honest expenses paid. Debtor makes the unwarranted conclusions that:

“I don’t believe anyone wants to argue issues of the power bill, gas, food, etc. I believe those figures are better left as is. They do, however represent a true, generalized picture of the financial situation, during the course of this chapter 13 case.”

Declaration, p. 2:7–9; Dckt. 68. At the very least, the court is concerned that the information be truthful and accurate, which is required as a condition of confirming and prosecuting a plan

Civil Minutes, p. 3, 5; Dckt. 70.

Joint Debtor now incorrectly argues that her conduct in this case is irrelevant, and the only thing standing between Deceased Debtor and Joint Debtor to the bankruptcy discharge is the “filing of the ‘1328 Certificate’ . . .” Opposition, Dckt. 76.

Joint Debtor does not explain how providing accurate financial information is such an “extensive amendment.” Rather, it appears that Joint Debtor believes that the simple accurate financial information provided by every consumer debtor in every consumer bankruptcy case is irrelevant and is not the law that applies to her.

Joint Debtor has not shown, and has not attempted, to timely and in good faith (even allowing for a belated attempt) prosecute this case for Deceased Debtor.

Cause exists to dismiss this case as to Deceased Debtor. The Motion is granted, and the case is dismissed as to Deceased Debtor.

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 David Cusick (“the Chapter 13 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 as to Raymundo Valtierra, Jr. (“Deceased Debtor”).

46.

[17-27377](#)-E-13
TAG-1

MELISSA SMITH
Aubrey Jacobsen

MOTION TO DISMISS CASE
12-13-17 [\[34\]](#)

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 Debtor (*pro se*), Debtor’s Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 22, 2017. By the court’s calculation, 26 days’ notice was provided. The court set the hearing for January 17, 2018. Dckt. 36.

The Motion to Dismiss 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 is granted, with the court ordering this case converted to one under Chapter 7 to allow an independent fiduciary to administer the assets in this case.

On December 13, 2017, Melissa Smith (“Debtor”) requested that her case be dismissed without prejudice according to 11 U.S.C. § 1307(b).

ORDER SETTING HEARING

On December 20, 2017, the court entered an order setting this Motion for hearing on January 17, 2018. Dckt. 36. The court noted that at the recent hearing on a Motion to Extend the Automatic Stay, Debtor’s counsel argued vigorously that Debtor was actively prosecuting this case in good faith and that Debtor would address the court’s concerns about accuracy of reported financial information.

DEBTOR’S RESPONSE

Debtor filed a Response on January 6, 2018. Dckt. 42. Debtor offers no testimony in response, but only has her attorney “make arguments” that are unsupported by any evidence. Debtor’s attorney argues

that after the December 2017 hearing on Debtor's motion to extend the automatic stay, Debtor reevaluated whether bankruptcy was the best way to achieve her financial goals. She had filed for bankruptcy to prevent a foreclosure on real property she owns, but she has since decided to sell that property. Debtor's unsecured debts listed on Schedule F total \$8,727.00, and she no longer seeks discharge for those debts and plans to pay them outside of bankruptcy. Additionally, Debtor will provide for payments to the Internal Revenue Service and Franchise Tax Board outside of bankruptcy.

Debtor's statement that she changed her mind after filing this case and now wants to sell, rather than keep the property, does not ring true. Debtor's Chapter 13 Plan filed at the start of this case, and clearly her "plan" when she filed this case, was to sell the property, not to keep it. See Chapter 13 Plan filed on November 7, 2017 (the day this bankruptcy case was filed), Additional Provisions providing for sale of the property; Dckt. 8.

Debtor states that she does not intend to file another case, and she agrees to a four-year ban from filing another bankruptcy case. She argues that she has not been trying to "judge shop" or to mislead the court and parties in interest. Her sole goal was to avoid foreclosure, which is now not a possibility because she has decided to sell her real property.

As stated above, from day one in this case Debtor "intended" to sell the property. Her attorney's unsupported arguments otherwise are contrary to the evidence in this case. It appears that Debtor's desire to get out of this case has arisen only when the court noted her inconsistent statements under penalty of perjury.

DISCUSSION

While having an almost absolute right to have a Chapter 13 case dismissed, dismissal is not an absolute right. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007) (conversion from Chapter 7); *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008) (dismissal of Chapter 13 case). A dismissal cannot be used as a device to abuse the federal judicial process, abuse other parties in interest, cover up bad faith conduct, or as a device for "judge shopping."

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).

Here, Debtor appears to try to slink into shadows rather than address prior statements about finances that have been made under penalty of perjury. Debtor does not appear to want to present accurate information to the court, but she appears to want to prevent the court and parties in interest from being provided with truthful statements.

Debtor argues that the only reason for now seeking dismissal (after arguing that she would prosecute diligently) is because she no longer plans to retain real property. Debtor agrees that a four-year ban from filing a new case is appropriate.

Cause exists in this case to dismiss or convert this Chapter 13 case. Conversion to Chapter 7 is in the best interests of the estate, creditors, and the bona fide, good faith interests of Debtor. It also accomplishes Debtor’s stated intentions, providing for the orderly, good faith sale of property of the estate and providing for the proper payment of creditors’ claims.

Dismissal of this case is not warranted.

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 Melissa Smith (“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 is granted, and the case is converted to one under Chapter 7.

47. [17-27377-E-13](#) MELISSA SMITH
Aubrey Jacobsen

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
12-12-17 [33]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 14, 2017. 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: \$79.00 due on December 7, 2017.

**The hearing on the Order to Show Cause is continued to 10:30 a.m. on
XXXXXXXXXXXXXXXXXX, 2018.**

The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$79.00.

The court has determined that conversion of this case is appropriate, rather than the dismissal as Debtor has sought through her own motion. The failure to make a \$79.00 filing fee shall not indirectly give Debtor the dismissal she desires when such dismissal has been determined not to be proper. However, such default may result in the denial of a discharge in the Chapter 7 case.

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 hearing on the Order to Show Cause is continued to **10:30 a.m. on XXXXXXXXXXXX, 2018.**

49.

[17-25701](#)-E-13
DPC-2

IGNACIO BARRAZA
Mikalah Liviakis

MOTION TO DISMISS CASE
11-7-17 [\[17\]](#)

Final Ruling: No appearance at the January 17, 2018 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 November 7, 2017. By the court’s calculation, 71 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.

David Cusick (“the Chapter 13 Trustee”) argues that Ignacio Barraza (“Debtor”) did not commence making plan payments and is \$3,200.00 delinquent in plan payments, which represents multiple months of the \$1,600.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

no testimony and merely has Debtor's attorney make the argument that somehow the substantial arrearage can be cured.

Under the confirmed Second Modified Plan in this case, Debtor has only \$5,034.00 per month to fund the Plan. Order, Dckt. 85; Plan, Dckt. 69. The confirmed Second Modified Plan provides that Debtor has only enough monthly projected disposable income to provide for a 59% dividend to creditors holding general unsecured claims. While a 59% dividend is greater than in most cases, merely paying something more than nothing is not the standard of computing projected disposable income.

In confirming the Second Modified Plan, the court, Chapter 13 Trustee, creditors, and other parties in interest relied upon the financial information provided by Debtor under penalty of perjury in the amended Schedules I and J filed on March 22, 2016, that there is only \$5,034.00 in projected disposable income. Dckt. 75.

It appears, based on the financial information provided under penalty of perjury, a financial impossibility that Debtor could have \$12,201.61 in one month to fund the Second Modified Plan.

NOVEMBER 1, 2017 HEARING

At the hearing, Debtor offered no straightforward explanation for the ability to cure such a substantial default. The court addressed a number of issues on the record. The court continued the hearing to 10:00 a.m. on January 17, 2017, for Debtor to file supplemental pleadings and to address Debtor's financial ability to perform the plan and how such large amounts of monies can be "generated in one month." Dckt. 109.

DEBTOR'S DECLARATION

Debtor filed a Declaration on January 10, 2018. Dckt. 112. Debtor explains that they were able to provide \$7,543.68 to cure the delinquency from their wages and by reducing expenses in the short term. Specifically, Debtor had become behind in payments throughout 2017 because of unexpected expenses, and while they were trying to pay for those expenses and plan payments, they "were trying to pinch a few dollars to come up with a full payment." *Id.* at 2:16–17. Debtor held off paying utility bills and other household expenses. *Id.* at 2:17–18.5.

Debtor provides a summary of what caused the delinquency and how the delayed timing of payments made the payment of \$12,204.61 in October 2017 seem unusual, but Debtor does not actually describe how the money was available. Debtor describes numerous expenses and how they were missing plan payments and other expenses, but Debtor's only vague explanation is that they "held on to approximately \$6,300.00" at some point, which helped cure the delinquency. *Id.* at 2:27.5–3:1.

RULING

Debtor's Declaration does not clarify how the delinquency was cured or how they could so drastically "not pay the bills" that they say must be paid monthly. Instead, Debtor has decided to tell the

court about how various expenses caused them to become behind in payments but then were somehow able to scrape together more than \$12,000.00 in one month.

Additionally, Debtor filed a Modified Plan on January 10, 2018, in what appears to be a further attempt to resolve the issues raised by this Motion. *See* Dckt. 118. Unfortunately for Debtor, the submitted plan is not the current plan form; instead, Debtor has used an outdated form.

Debtor has provided the court with a declaration in support of the Motion to Confirm that discusses changes to specific expenses as well as changes in Debtor's income since this case was filed in 2014. Supplemental Schedules I and J have been filed by Debtor. Dckt. 114.

In reviewing Supplemental Schedules I and J, some items stand out when compared to the prior Amended Schedules I and J (Dckt. 75). On the two Schedules I, though Debtor states that there have been decreases in income, their Combined Monthly Net Income is almost exactly (within \$1.04 of the other) the same amount of Monthly Income from employment.

On the two Schedules J, Debtor now shows almost identical monthly expenses, notwithstanding having made significant home and vehicle repairs. It appears that the information on the latest Schedule J could be "constructed" expenses to reach a pre-determined Net Monthly Income to minimize the monthly plan payment rather than properly provide for payment of creditor claims.

The Chapter 13 Trustee has now filed a second Motion (Dckt. 120) to dismiss the Motion to Dismiss now before the court. Given that Debtor is pursuing a Modified Plan, the court dismisses the present Motion without prejudice.

However, in considering the Motion to Modify the court will closely review the financial information provided. Given the almost identical expense information and Debtor having such substantial "surplus" monthly net income to cure the arrearage, Debtor must provide the court with credible, properly supported financial information. That includes documenting that Debtor has actually made charitable contributions averaging \$400 per month prior to and during this case. Debtor will also document the \$1,400.00 in monthly food and housekeeping supplies. Debtor will properly explain how there are actual monthly medical expenses of \$350.00, \$615.00 transportation expenses, and home maintenance expenses increased to \$200.00.

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

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

51. [15-27905](#)-E-13 SALLY TOWN MOTION TO DISMISS CASE
DPC-1 Rick Morin 12-15-17 [33]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

52. [17-21505](#)-E-13 YVONNE DELAGUARDIA MOTION TO DISMISS CASE
DPC-2 Michael Hays 12-18-17 [37]

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 dismissed without prejudice, and the bankruptcy case shall proceed in this court.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Yvonne Delaguardia (“Debtor”) is \$420.00 delinquent in plan payments, which represents multiple months of the \$210.00 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).

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.

54. [17-25305-E-13](#) **ELIZABETH WILSON** **MOTION TO DISMISS CASE**
DPC-1 **Mikalah Liviakis** **12-15-17 [17]**

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Elizabeth Wilson (“Debtor”) is \$9,643.62 delinquent in plan payments, which represents multiple months of the \$3,799.00 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).

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 David Cusick (“the Chapter 13 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. [13-33111](#)-E-13 SARAH RICHEY MOTION TO DISMISS CASE
DPC-1 Rebecca Ihejirika 12-15-17 [58]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

David Cusick (“the Chapter 13 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.**

56. [17-23911](#)-E-13 CRAIG MASON MOTION TO DISMISS CASE
DPC-1 Lucas Garcia 12-4-17 [50]

Final Ruling: No appearance at the January 17, 2018 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 December 4, 2017. By the court’s calculation, 44 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 21, 2018.

David Cusick's ("the Chapter 13 Trustee") Motion argues that Craig Mason ("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 October 17, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 8, 2017. Dckts. 54, 56. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 57. 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.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 66. The Chapter 13 Trustee notes that an Amended Plan has been filed, and he informs the court that he has filed opposition to its confirmation.

RULING

A review of the Amended Plan shows that it is based upon the prior plan form used in this district. That form is now outdated. Rather than dismiss this case now, the court continues the hearing to allow Debtor and counsel time to prepare a plan with the proper form. The hearing on the Motion is continued to 10:00 a.m. on March 21, 2018.

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 David Cusick ("the Chapter 13 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 10:00 a.m. on March 21, 2018.

58.

[17-25215-E-13](#)
DPC-2

ENRIQUE GARCIA
Scott de Bie

MOTION TO DISMISS CASE
11-29-17 [24]

Final Ruling: No appearance at the January 17, 2018 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 November 29, 2017. By the court’s calculation, 49 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.

David Cusick’s (“the Chapter 13 Trustee”) Motion argues that Enrique Garcia (“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 October 17, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on January 2, 2018. Dckts. 30, 31. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 30, 33. 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 David Cusick (“the Chapter 13 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.

59. [17-26217](#)-E-13 **LATRICE/MICHAEL HATCHER** **MOTION TO DISMISS CASE**
DPC-2 **James Keenan** **12-18-17 [21]**

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) argues that Latrice Hatcher and Michael Hatcher (“Debtor”) did not commence making plan payments and are \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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 David Cusick (“the Chapter 13 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.

60. [17-26719-E-13](#) **BART SETTER** **MOTION TO DISMISS CASE**
DPC-2 **Mark Shmorgon** **11-14-17 [15]**

Final Ruling: No appearance at the January 17, 2018 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 and Office of the United States Trustee on November 14, 2017. By the court’s calculation, 64 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 21, 2018.

David Cusick (“the Chapter 13 Trustee”) alleges that Bart Setter (“Debtor”) 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).

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on January 10, 2018. Dckt. 36. Debtor argues that he filed this case in *pro se* without assistance of counsel and was unprepared to prosecute. Now, Debtor is represented and is moving toward a confirmation hearing on February 27, 2018. Debtor states that the missing documents have been provided and that he will attend the continued Meeting of Creditors.

RULING

Debtor has demonstrated that he intends to prosecute this by hiring an attorney to help him get on track. The court continues this hearing to 10:00 a.m. on February 21, 2018, to allow Debtor time to attend the Meeting of Creditors.

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 David Cusick (“the Chapter 13 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 10:00 a.m. on February 21, 2018.

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Judith Darnold (“Debtor”) is \$3,208.00 delinquent in plan payments, which represents multiple months of the \$1,095.00 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).

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 David Cusick (“the Chapter 13 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.

62. [16-25321](#)-E-13
DPC-3

JAY COHEN
Steele Lanphier

CONTINUED MOTION TO DISMISS
CASE
10-4-17 [89]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on November 6, 2017, Dckt. 105; 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 Jay Cohen (“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 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 David Cusick (“[the Chapter 13 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. 105, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

63. [17-25221](#)-E-13 TOMMIE RICHARDSON
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-13-17 [31]**

Final Ruling: No appearance at the January 17, 2018 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 November 15, 2017. 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 November 6, 2017.

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.

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jeffrey Nelson and Lurdes Rosales (“Debtor”) are \$7,200.00 delinquent in plan payments, which represents multiple months of the \$2,400.00 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).

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 David Cusick (“the Chapter 13 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.

65. [17-20827](#)-E-13 **STEPHEN ALBERTS** **MOTION TO DISMISS CASE**
DPC-2 **Mikalah Liviakis** **12-18-17 [25]**

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Stephen Alberts (“Debtor”) is \$8,861.00 delinquent in plan payments, which represents multiple months of the \$3,520.00 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).

FILING OF MODIFIED PLAN

Stephen Alberts (“Debtor”) filed a Modified Plan and Motion to Confirm on January 3, 2018. Dckts. 29, 33. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 29, 31. 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.

67. [14-27630](#)-E-13 **ROSIE GOMEZ**
DPC-2 **Paul Bindra**

MOTION TO DISMISS CASE
12-19-17 [78]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 10, 2018, Dckt. 84; 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 Rosie Gomez (“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 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 David Cusick (“the Chapter 13 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. 84, 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.

68.

[13-31931](#)-E-13
DPC-3

TRAVIS/KARI MANHART
Steven Shumway

MOTION TO DISMISS CASE
12-15-17 [\[93\]](#)

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Travis Manhart and Kari Manhart (“Debtor”) are \$12,138.52 delinquent in plan payments, which represents multiple months of the \$3,181.13 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).

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 David Cusick (“the Chapter 13 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.

69. [16-24233](#)-E-13
DPC-2

GREGORY/KATHRYN
KLAGENBERG
Mikalah Liviakis

MOTION TO DISMISS CASE
12-19-17 [\[35\]](#)

Final Ruling: No appearance at the January 17, 2018 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 December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Gregory Klagenberg and Kathryn Klagenberg (“Debtor”) are \$1,398.00 delinquent in plan payments, which represents multiple months of the \$699.00 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).

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 David Cusick (“the Chapter 13 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.

70. [16-24134](#)-E-13 **LETICIA BARRERA** **MOTION TO DISMISS CASE**
DPC-1 **Thomas Gillis** **12-19-17 [31]**

Final Ruling: No appearance at the January 17, 2018 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 December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Leticia Barrera (“Debtor”) is \$3,144.20 delinquent in plan payments, which represents multiple months of the \$1,799.90 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).

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

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

71. [16-27334-E-13](#) ANNA RICE MOTION TO DISMISS CASE
DPC-1 Michael Benavides 12-15-17 [50]

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Anna Rice (“Debtor”) is \$3,950.00 delinquent in plan payments, which represents multiple months of the \$1,200.00 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).

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 David Cusick (“the Chapter 13 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.

72. [17-25234-E-13](#) **YVONNE JOHNSON** **MOTION TO DISMISS CASE**
DPC-2 **Stacie Power** **12-4-17 [37]**

Final Ruling: No appearance at the January 17, 2018 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 December 4, 2017. By the court’s calculation, 44 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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on February 27, 2018.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Yvonne Johnson (“Debtor”) is \$1,318.02 delinquent in plan payments, which represents less than one month of the \$1,965.84 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).

The Chapter 13 Trustee’s Motion argues that 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 October 24, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 49. Debtor states that an Amended Plan has been filed and set for hearing and that it cures the delinquency.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on January 3, 2018. Dckts. 41, 45. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 41, 44. 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.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 56. The Chapter 13 Trustee argues that the Amended Plan uses the court's prior form version and is now outdated. He notes that Debtor is no longer delinquent under the Amended Plan, but because it is not in line with the current plan form, the Chapter 13 Trustee requests that this hearing be continued to the confirmation hearing date.

RULING

The Chapter 13 Trustee is correct that the prior standard plan form has been used for the Amended Plan. In light of that error, the court does not yet deny this Motion without prejudice. Instead, the court continues the hearing to 3:00 p.m. on February 27, 2018, to be heard in conjunction with Debtor's Motion to Confirm Amended Plan.

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 David Cusick ("the Chapter 13 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 3:00 p.m. on February 27, 2018.

73. [15-23635](#)-E-13 STANLEY/PATRICIA COVELL MOTION TO DISMISS CASE
DPC-1 David Foyil 12-18-17 [43]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on January 10, 2018, Dckt. 55; 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 Stanley Covell and Patricia Covell (“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 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 David Cusick (“the Chapter 13 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. 55, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the January 21, 2018 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 December 7, 2017. By the court’s calculation, 41 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 21, 2018.

David Cusick (“the Chapter 13 Trustee”) argues that George Alm (“Debtor”) did not commence making plan payments and is \$135.00 delinquent in plan payments, which represents one month of the \$135.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee alleges that Debtor 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).

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has failed to timely provide the Chapter 13 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); FED. R. BANKR. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Chapter 13 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'S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 38. Debtor claims that missing the first Meeting of Creditors was because of a calendar conflict for Debtor's counsel. He argues that he will attend the continued meeting.

Debtor states that he has provided copies of his 2015 and 2016 income tax returns. He states that he has provided all available business documents to the Chapter 13 Trustee. Finally, he argues that he is current on plan payments.

CHAPTER 13 TRUSTEE'S REPLY

The Chapter 13 Trustee filed a Reply on January 9, 2018. Dckt. 41. The Chapter 13 Trustee states that the delinquency has been cured, but he asserts that the 2016 tax return and the requested business documents have not been provided.

The Chapter 13 Trustee requests that the hearing be continued until after the next Meeting of Creditors, which is set for February 1, 2018.

RULING

Debtor appearing to cooperate, and the Chapter 13 Trustee requesting a continuance, the hearing on this Motion is continued to 10:00 a.m. on February 21, 2018.

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 David Cusick ("the Chapter 13 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 10:00 a.m. on February 21, 2018.

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Antwanette Raymond (“Debtor”) is \$3,700.00 delinquent in plan payments, which represents multiple months of the \$680.00 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).

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 David Cusick (“the Chapter 13 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.

76. [15-28638](#)-E-13 **JOSEPH TARR AND GINA** **MOTION TO DISMISS CASE**
DPC-2 **CHAVES** **12-15-17 [66]**
 Ashley Amerio

Final Ruling: No appearance at the January 17, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on January 4, 2018, Dckt. 72; 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 Joseph Tarr and Gina Chaves (“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 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 David Cusick (“[the Chapter 13 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. 72, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the January 17, 2018 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 November 6, 2017. By the court’s calculation, 72 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.

David Cusick (“the Chapter 13 Trustee”) alleges that Fiaz Javed (“Debtor”) 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).

The Chapter 13 Trustee argues that Debtor did not commence making plan payments and is \$150.00 delinquent in plan payments, which represents one month of the \$150.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues that 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); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on December 28, 2017. Dckt. 82. The Chapter 13 Trustee reports that Debtor attended the continued Meeting of Creditors on November 16, 2017; that he provided copies of his tax returns; and that he partially resolved the ground for not providing pay advices by providing recent stubs, but the Chapter 13 Trustee requests additional ones from July and August 2017.

What Debtor has not cured is the delinquency, however. Debtor is now \$487.98 delinquent.

RULING

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 David Cusick ("the Chapter 13 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.

78. [17-24045-E-13](#) **PAULINE ABBOTT** **MOTION TO DISMISS CASE**
DPC-4 **Harry Roth** **11-29-17 [91]**

Final Ruling: No appearance at the January 17, 2018 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 November 29, 2017. By the court's calculation, 49 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Pauline Abbott (“Debtor”) is \$4,620.00 delinquent in plan payments, which represents multiple months of the \$440.00 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).

The Chapter 13 Trustee’s Motion argues that 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 November 7, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on January 9, 2018. Dckts. 95, 99. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 95, 97. 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 David Cusick (“the Chapter 13 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 January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mario Borrego and Christine Borrego (“Debtor”) are \$1,430.00 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).

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 David Cusick (“the Chapter 13 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.

80. [15-20352-E-13](#) **GREGORY/CLARICE BRIDGES** **MOTION TO DISMISS CASE**
DPC-4 Peter Macaluso 12-20-17 [[124](#)]

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on January 10, 2018, Dckt. 138; 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 Gregory Bridges and Clarice Bridges (“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 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 David Cusick (“the Chapter 13 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. 138, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Claudia Navarro (“Debtor”) is \$460.00 delinquent in plan payments, which represents multiple months of the \$230.00 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).

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 David Cusick (“the Chapter 13 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.

83. [17-24960](#)-E-13 **DOUGLAS/VALERIE LUTES** **MOTION TO DISMISS CASE**
DPC-2 Peter Macaluso 12-7-17 [\[47\]](#)

Final Ruling: No appearance at the January 17, 2017 hearing is required.

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

84. [17-26960](#)-E-13 **ALFREDO OROZCO** **MOTION TO DISMISS CASE**
DPC-2 Thomas Gillis 12-19-17 [\[21\]](#)

Final Ruling: No appearance at the January 17, 2018 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 December 19, 2017. By the court’s calculation, 29 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.

David Cusick (“the Chapter 13 Trustee”) argues that Alfredo Orozco (“Debtor”) did not commence making plan payments and is \$110.00 delinquent in plan payments, which represents one month of the \$110.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee alleges that Debtor 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).

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 David Cusick (“the Chapter 13 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.

85.	14-28961 -E-13 DPC-3	RODEL MAULINO AND MIMSY ABARA-MAULINO Mitchell Abdallah	CONTINUED MOTION TO DISMISS CASE 9-27-17 [80]
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Final Ruling: No appearance at the January 17, 2018 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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David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on November 28, 2017, Dckt. 96; 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 Rodel Maulino and Mimsy Abara-Maulino (“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 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 David Cusick (“the Chapter 13 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. 96, 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.

86. [15-26661-E-13](#) **ANNE HARPER** **MOTION TO DISMISS CASE**
DPC-1 **Joseph Canning** **12-18-17 [41]**

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Anne Harper (“Debtor”) is \$8,581.75 delinquent in plan payments, which represents multiple months of the \$6,385.85 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).

DEBTOR'S REPLY

Debtor filed a Reply on January 3, 2018. Dckt. 45. Debtor promises to file a modified plan before the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. 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 David Cusick (“the Chapter 13 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 January 17, 2018 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 November 13, 2017. By the court’s calculation, 65 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Dan Miller and Meghan Miller (“Debtor”) are \$6,223.88 delinquent in plan payments, which represents multiple months of the \$2,073.88 plan payment. Before the hearing, multiple plan payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that 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 October 3, 2017. 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).

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 David Cusick (“the Chapter 13 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.

88. [15-23668-E-13](#) **JUAN/GENEVA GOMEZ** **MOTION TO DISMISS CASE**
DPC-4 **Mary Ellen Terranella** **12-18-17 [120]**

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Juan Gomez and Geneva Gomez (“Debtor”) are \$8,735.00 delinquent in plan payments, which represents multiple months of the \$2,915.00 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).

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:

91. [15-24672-E-13](#)
DPC-5

ROBIN BUGBEE
Seth Hanson

MOTION TO DISMISS CASE
12-18-17 [67]

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Robin Bugbee (“Debtor”) is \$1,925.00 delinquent in plan payments, which represents one month of the \$1,925.00 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).

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 David Cusick (“the Chapter 13 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.

92. [17-24979-E-13](#) **MARIO LOPEZ AND LEAH**
DPC-3 **ALBERTO**
Lucas Garcia

MOTION TO DISMISS CASE
12-7-17 [50]

Final Ruling: No appearance at the January 17, 2018 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 December 7, 2017. By the court’s calculation, 41 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 21, 2018.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mario Lopez and Leah Alberto (“Debtor”) are \$2,85.00 delinquent in plan payments, which represents multiple months of the \$950.00 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).

The Chapter 13 Trustee’s Motion argues that 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 October 3, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed a Amended Plan and Motion to Confirm on December 15, 2017. Dckts. 54, 58. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 56. 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.

RULING

Unfortunately for Debtor, the plan form used is the prior form for this district. That form is now outdated. Rather than dismiss this case, the court continues the hearing on this Motion to allow Debtor and counsel time to submit a plan based on the current form. The hearing is continued to 3:00 p.m. on February 27, 2018, to be heard in conjunction with the confirmation hearing for the Amended Plan.

94. [16-22985-E-7](#) **RONALD BARNES** **MOTION TO DISMISS CASE**
DPC-1 **Mohammad Mokarram** **12-18-17 [18]**

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

95. [17-25985-E-13](#) **DANIEL MARTINEZ** **ORDER TO SHOW CAUSE - FAILURE**
 Mikalah Liviakis **TO PAY FEES**
 11-27-17 [39]

Final Ruling: No appearance at the January 17, 2018 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 November 29, 2017. 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: \$169.00 due on October 10, 2017, and November 7, 2017.

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.

96. [17-25486](#)-E-13 CHERYL HANSEN
Scott Shumaker

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
10-23-17 [47]

Final Ruling: No appearance at the January 17, 2018 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 October 25, 2017. The court computes that 84 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 October 17, 2017.

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.

97. [17-25486](#)-E-13 CHERYL HANSEN
 Scott Shumaker

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-22-17 [63]**

Final Ruling: No appearance at the January 17, 2018 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 November 24, 2017. The court computes that 54 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 November 16, 2017.

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.

Final Ruling: No appearance at the January 17, 2018 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 December 7, 2017. By the court’s calculation, 41 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.

David Cusick (“the Chapter 13 Trustee”) argues that Kathleen Hill (“Debtor”) did not commence making plan payments and is \$2,925.00 delinquent in plan payments, which represents multiple months of the \$975.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues that 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 November 21, 2017. 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).

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 David Cusick (“the Chapter 13 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.

99. [16-26593](#)-E-13 **JAY KLIPP** **MOTION TO DISMISS CASE**
DPC-3 **Michael Hays** **12-19-17 [57]**

Final Ruling: No appearance at the January 17, 2018 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 December 19, 2017. By the court’s calculation, 29 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 21, 2018.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jay Klipp (“Debtor”) is \$786.00 delinquent in plan payments, which represents multiple months of the \$262.00 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’S RESPONSE

Debtor filed a Response on January 3, 2018. Dckt. 61. Debtor does not expect to be able to cure the delinquency by the hearing. Debtor requests that instead of dismissing this case that it be continued to February 21, 2018. Debtor requests that continuance because he usually receives approximately \$4,000.00 as a tax refund, which he would be able to use to cure the delinquency.

RULING

While cause exists to dismiss this case because of the delinquency that Debtor admits he cannot cure in time for the hearing, there is also a good reason to continue the hearing. Debtor may receive as much as \$4,000.00 in tax refunds, which would be more than enough to cure the \$786.00 delinquency plus the additional payments that will come due. The hearing on the Motion is continued to 10:00 a.m. on February 21, 2018. FN.1.

FN.1. The continuance also allows the Chapter 13 Trustee to investigate and Debtor to properly provide for such a substantial tax refund in computing the actual projected disposable income to be used to fund the Plan in this case.

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 David Cusick (“the Chapter 13 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 10:00 a.m. on February 21, 2018.

100. [15-27295-E-13](#) **ERROL/ALITA MERCADO** **MOTION TO DISMISS CASE**
DPC-7 **Ricard Jare** **12-15-17 [131]**

Final Ruling: No appearance at the January 17, 2018 hearing is required.

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

Final Ruling: No appearance at the January 17, 2018 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 December 18, 2017. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Michelle Dorenkamp (“Debtor”) is \$2,449.77 delinquent in plan payments, which represents multiple months of the \$695.00 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).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 10, 2018. Dckts. 71, 74. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 71, 73. 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 David Cusick (“the Chapter 13 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.

102. [15-25697](#)-E-13 **DONNA PALMER** **MOTION TO DISMISS CASE**
DPC-2 **Eamonn Foster** **12-15-17 [57]**

Final Ruling: No appearance at the January 17, 2017 hearing is required.

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

103. [13-30998](#)-E-13 **RALPH SETTEMBRINO** **MOTION TO DISMISS CASE**
DPC-4 **Mary Ellen Terranella** **12-15-17 [143]**

Final Ruling: No appearance at the January 17, 2018 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 December 15, 2017. By the court’s calculation, 33 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.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Ralph Settembrino (“Debtor”) is \$5,525.55 delinquent in plan payments, which represents multiple months of the \$2,628.74 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).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on January 2, 2018. Dckts. 147, 149. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor.

Dckts. 147, 150. 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 David Cusick ("the Chapter 13 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.

104.	<u>17-26898-E-13</u>	ANA HENRIQUEZ Timothy McCandless	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-2-17 [12]
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Final Ruling: No appearance at the January 17, 2018 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 November 4, 2017. The court computes that 74 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: \$310.00 due on October 19, 2017.

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

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

The court shall issue 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.

Final Ruling: No appearance at the January 17, 2018 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 December 14, 2017. 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.

David Cusick (“the Chapter 13 Trustee”) argues that Ana Henriquez (“Debtor”) did not commence making plan payments and is \$1,273.99 delinquent in plan payments, which represents one month of the \$1,273.99 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee also argues that Debtor is causing unreasonable delay that is prejudicial to creditors because relief under 11 U.S.C. § 362(d)(4) was granted in Debtor’s prior case (Case No. 15-25615), and the property attached to that relief is included in the pending plan that has not received any payments from Debtor.

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 David Cusick (“the Chapter 13 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.