

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**Notice**

**The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 33.**

**The court has also reorganized the items for which the tentative rulings are issued, Items 1–32, attempting to first address the items in which short argument is anticipated.**

**May 30, 2018, at 10:00 a.m.**

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1. [16-23407-E-13](#) IRMA QUIAMBAO MOTION TO DISMISS CASE  
DPC-4 Kristy Hernandez 5-1-18 [\[101\]](#)

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 1, 2018. 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 September 5, 2018.~~**

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Irma Quiambao (“Debtor”) is \$1,400.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR’S REPLY**

Debtor filed a Reply on May 16, 2018. Dckt. 105. Debtor promises to cure the delinquency before the hearing date. Debtor explains that a \$700.00 cashier’s check was lost in the mail and that she is awaiting the check to be reissued, which she states will take up to ninety days.

Debtor requests that the hearing be continued for at least ninety days while her lost check is reissued.

## **RULING**

About the reissued check, Debtor reported at the hearing that **XXXXXXXXXXXXXX**.

**~~Debtor having provided sufficient information that the missing check is being processed, the court continues the hearing to 10:00 a.m. on September 5, 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 September 5, 2018.~~**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 12, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Chereese Camacho (“Debtor”) did not commence making plan payments and is \$80.00 delinquent in plan payments, which represents multiple months of the \$40.00 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 file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on March 27, 2018. 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 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).

**DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 16, 2018. Dckt. 38. Debtor promises to file an amended plan before the hearing date. Debtor indicates that her Social Security card was burned in a house fire.

**FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on May 23, 2018. Dckt. 41, 43. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 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.

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.

**SET AS TENTATIVE TO ALLOW COUNSEL FOR DEBTOR  
TO APPEAR AND ADVISE COURT IF SUBSTITUTION OF  
A REPRESENTATIVE WILL BE SOUGHT**

**NO APPEARANCE REQUIRED IF NO SUBSTITUTION IS TO BE  
SOUGHT**

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

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Local Rule 9014-1(f)(1) Motion—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 April 18, 2018. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Billy Tenberg (“Debtor”) is \$2,235.58 delinquent in plan payments, which represents multiple months of the \$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).

Additionally, the Chapter 13 Trustee states that his office was notified that Debtor passed away on January 10, 2018. He notes that a notice of death has not been filed. A review of the docket shows that the Notice of Death was filed on May 22, 2018. Dckt. 85.

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:



5. [14-20519-E-13](#)      **STEVEN/DEBORAH MCCONNELL MOTION TO DISMISS CASE**  
**DPC-1**                      **Peter Macaluso**                                              **5-1-18 [44]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 Steven McConnell and Deborah McConnell (“Debtor”) are \$10,538.50 delinquent in plan payments, which represents multiple months of the \$2,003.50 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 May 15, 2018. Dckt. 48. Debtor promises to a modified plan before the hearing date.

In the Opposition, Debtor’s counsel offers no explanation as to why Debtor is \$10,538.50 delinquent and what has happened to those monies. Debtor does not (or refuses to) provide a declaration testifying as to the reason for the default and showing that Debtor is prosecuting this case in good faith.

**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.

6. [17-26719-E-13](#)      **BART SETTER**      **MOTION TO DISMISS CASE**  
**DPC-3**                      **Mark Shmorgon**                      **5-1-18 [63]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 ~~XXXXXXXXXXXXXXXXXXXX~~.**

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Bart Setter (“Debtor”) is \$17,840.45 delinquent in plan payments, which represents multiple months of the \$5,924.45 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 May 2, 2018. Dckt. 67. Debtor admits that he is unable to fund his plan and promises to convert his case to one under Chapter 7 prior to the hearing. Debtor has provided his declaration (Dckt. 68) attesting to the facts as stated in the opposition.

**RULING**

~~Unfortunately for Debtor, a promise to convert this case does not have the effect of actually converting to Chapter 7. 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 ~~XXXXXXXXXX~~.

7. 17-25320-E-13      **DAVID/KIMBERLY TREXLER**      **MOTION TO DISMISS CASE**  
DPC-3                      **Eric Schwab**                                      **4-19-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2018. 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.**

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 at the February 27, 2018 hearing. Dckt. 45. 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 RESPONSE**

Debtor filed a Response on May 8, 2018. Dckt. 53. Debtor promises to an amended plan before the hearing date and set it for confirmation on July 17, 2018.

## **CHAPTER 13 TRUSTEE'S REPLY**

The Chapter 13 Trustee filed a Reply on May 15, 2018. Dckt. 55. The Chapter 13 Trustee states that there has been no explanation for the delay, and he is uncertain whether a confirmation hearing in mid-July is reasonable given that this case was filed on August 11, 2017.

## **RULING**

Unfortunately for Debtor, a promise to an amended 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on May 1, 2018. 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 (*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 Rachel Allen (“Debtor”) did not commence making plan payments and is \$450.00 delinquent in plan payments, which represents one month of the \$450.00 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 appeared at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, but she indicated that she would be dismissing this case, and the Meeting was not concluded. That 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)(I); 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)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). 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).

The Chapter 13 Trustee argues that Debtor has not disclosed all of her real property because PNC Bank, National Association, filed a Proof of Claim for property that is not disclosed on Schedule A.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*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 Shannon Rasmussen and Ethan Rasmussen (“Debtor”) did not commence making plan payments and are \$3,600.00 delinquent in plan payments, which represents multiple months of the \$1,800.00 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)(I); 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); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**CHAPTER 13 TRUSTEE’S STATUS REPORT**

The Chapter 13 Trustee filed a Status Report on May 2, 2018. Dckt. 44. The Chapter 13 Trustee reports that all three grounds for dismissal remain, and now, the delinquency stands at \$4,685.16.

**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.

10. [14-23533-E-13](#)      **JOSEPH CARDOZA**      **MOTION TO DISMISS CASE**  
DPC-1                      Peter Cianchetta                      5-2-18 [30]

**SET AS TENTATIVE TO ALLOW COUNSEL FOR DEBTOR  
TO APPEAR AND ADVISE COURT IF SUBSTITUTION OF  
A REPRESENTATIVE WILL BE SOUGHT**

**NO APPEARANCE REQUIRED IF NO SUBSTITUTION IS TO BE  
SOUGHT**

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

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Local Rule 9014-1(f)(1) Motion—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 May 2, 2018. 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). 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 Joseph Cardoza (“Debtor”) is \$1,875.00 delinquent in plan payments, which represents multiple months of the \$625.00 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 reports that he has received information that Debtor is deceased. Declaration ¶ 3, Dckt. 32. Reviewing the schedules, the Chapter 13 Trustee notes that there is no non-exempt equity, and he is uncertain whether further administration of this case is appropriate or in parties’ best interest.

At the hearing, Debtor’s counsel reported ~~XXXXXXXXXXXXXXXXXX~~.

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. [17-26135](#)-E-13  
DPC-1

CHERYL MCNEAL  
Richard Jare

MOTION TO DISMISS CASE  
5-1-18 [19]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 ~~XXXXXXXXXXXXXXXXXXXX~~.**

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Cheryl McNeal (“Debtor”) 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. 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 May 16, 2018. Dckt. 23. Debtor promises to file a modified plan before the hearing date. The Opposition explains that preparation of the new plan has been delayed due to counsel’s illness.

**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.



13. [15-24266](#)-E-13  
DPC-2

GLORIA WELLINGTON  
Peter Macaluso

CONTINUED 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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on 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's counsel promises that Debtor will cure the delinquency before the hearing date. Debtor fails (or refuses) to provide a declaration explaining how the delinquency occurred or how she can make such substantial cure payments.

#### **JANUARY 17, 2018 HEARING**

At the hearing, Debtor's counsel reported that a modified plan would be filed, and the Chapter 13 Trustee concurred to a continuance of the hearing. Dckt. 51. The court continued the hearing to 10:00 a.m. on March 21, 2018. *Id.*

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

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 54. Debtor's counsel reports that Debtor passed away on January 27, 2018, and that a Notice of Death was filed on March 1, 2018. Debtor's

counsel reports that Debtor's family wishes additional time to meet with counsel to discuss further administration of the case.

## **CHAPTER 13 TRUSTEE'S RESPONSE**

The Chapter 13 Trustee filed a Response on March 12, 2018. Dckt. 56. The Chapter 13 Trustee notes that Federal Rule of Civil Procedure 25(a)(1) requires a motion for substitution to be filed within ninety days of a notice of death being filed with the court. The Chapter 13 Trustee does not oppose continuing the hearing.

## **MARCH 21, 2018 HEARING**

At the hearing, the court granted Debtor's counsel's request for a continuance and continued the Motion to 10:00 a.m. on May 30, 2018. Dckt. 58, 59.

## **RULING**

Despite several months' worth of time for Debtor's counsel to consult Debtor's family about what strategy they want to pursue for this case, no further pleadings have been presented to the court. Cause exists to dismiss the 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.

[15-27773-E-13](#)  
DPC-4

KATE KERNER  
Peter Macaluso

MOTION TO DISMISS CASE  
4-27-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 27, 2018. 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 Kate Kerner ("Debtor") is \$11,079.54 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 May 15, 2018. Dckt. 82. Debtor's counsel argues that Debtor promises to file a modified plan before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reasons for the defaults or how such financial failures are not likely to continue in this case.

#### **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.

15. [18-20473-E-13](#)      **PATRICIA DI GRAZIA**      **MOTION TO DISMISS CASE**  
**DPC-1**                      **Pro Se**                                      **3-29-18 [28]**

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

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Local Rule 9014-1(f)(1) Motion—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 March 29, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*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 Patricia Di Grazia (“Debtor”) did not commence making plan payments and is \$1,394.16 delinquent in plan payments, which represents multiple months of the \$697.08 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.

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

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)(I); 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); FED. R. BANKR. P. 4002(b)(2)(A). 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).

The Chapter 13 Trustee asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;
- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on May 16, 2018. Dckt. 36. The Opposition is two pages long, but the bottom of the two pages are numbered "1" and "3." Reading the Opposition, clearly there are several paragraphs missing from the unfiled page 2.

Page 3's first full paragraph is number "5" which argues that Debtor has prepared a motion to confirm that will be filed. Paragraph 6 argues that Debtor has attached the missing credit counseling certificate as an exhibit. *See* Exhibit F, Dckt. 35.

Also on May 16, 2018, Debtor filed a Declaration Requesting Entry of Order Confirming Chapter 13 Plan Without Chapter 13 Trustee's Approval of Form of Order. Dckt. 35. The court is unsure what such a document is, but it appears to be Debtor's attempt at filing a motion to confirm the plan in this case.

The Declaration contains stock legal conclusions that are unsupported by any evidence and appear to be copy-and-pasted by Debtor without any consideration of the statements' impact. At the end of the Declaration, there are six exhibits, the ones at least partially referenced in the Opposition.

Exhibit A appears to be two print-outs from Golden1 Credit Union for two checks, one in the amount of \$1,394.16 and the other in the amount of \$697.08. The Chapter 13 Trustee is listed as the payee for each check.

Exhibit B is a plan submitted on the court's current plan form. Nothing is attached to Exhibit C because the pages appear to be out of order. Exhibit D is a letter detailing retirement benefits received by Roland Di Grazia and a Residential Lease Agreement. Exhibit E is a profit and loss statement for Roland Di Grazia. Finally, Exhibit F is a Certificate of Debtor Education for Debtor.

## RULING

Although Debtor appears to be trying to address the grounds raised by the Chapter 13 Trustee, there are outstanding problems in this case still. There is no evidence that Debtor has provided her tax returns or pay advices. Debtor has not served the Plan on all creditors. Debtor has not filed a motion to confirm the plan and has not set that motion for a confirmation hearing.

Looking at the Plan form attached as an exhibit to the declaration, the court notes that it is deficient in several ways:

- A. Monthly Plan Payment is \$697.06 for sixty months.
- B. Class 1 Claim of "Fay Servicing" consists of:
  - 1. Regular Monthly Post-Petition Installment of \$697.08, and
  - 2. Cure Payment for \$41,824.96 Arrearage over sixty months of \$697.08.
- C. The Class 2, 3, 4, 5, 6, and 7 (general unsecured) portions of the Plan form are left blank.

Dckt. 35 at 6–11.

Schedule I lists Debtor and non-debtor spouse having monthly income of \$5,535.00. Dckt. 24 at 20–21. No provision is made for the payment of income or self employment taxes on Schedule I. No statement of business gross income and expenses is provided with Schedule I showing how Debtor computes \$3,000 in net monthly business income.

Schedule J lists Debtor having \$4,512.99 in monthly expenses, which includes \$3,146.88 payment for mortgage (and presumably insurance and taxes). *Id.* at 22. On Schedule J, Debtor also states:

- A. Home Maintenance Expenses of .....\$0.00
- B. Water, Sewer, Garbage Expenses of.....\$0.00
- C. Phone, Internet, Cable Expenses of.....\$0.00
- D. Transportation Expenses of.....\$0.00
- E. Entertainment Expenses of.....\$0.00

F. Tax Expenses of .....\$0.00

*Id.* at 22–23.

The Statement of Financial Affairs is not completed, with no income information provided in Sections 4 and 5. *Id.* at 27. Debtor affirmatively states under penalty of perjury that she had no income in calendar years 2018, 2017, and 2016.

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.	<a href="#">17-25486-E-13</a> DPC-2	CHERYL HANSEN Scott Shumaker	<b>CONTINUED MOTION TO DISMISS CASE 1-24-18 [88]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 24, 2018. 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 Cheryl Hansen (“Debtor”) is delinquent in plan payments, whether measured under the original plan or by the approved trial loan modification. Under the Plan, he asserts that Debtor is \$9,210.00 delinquent, and under the trial loan modification, he states that Debtor is \$7,842.06 delinquent. 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 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 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 RESPONSE**

Debtor filed a Response on February 1, 2018. Dckt. 95. Debtor promises to file an amended plan before the hearing date because her supplemental income has decreased. She states that her boyfriend was providing approximately \$1,000.00 per month, but they are no longer dating, and he stopped providing funds.

## **FEBRUARY 21, 2018 HEARING**

At the hearing, the Chapter 13 Trustee concurred in continuing the hearing on this Motion in light of an amended plan being filed. Dckt. 104. The court continued the hearing to 10:00 a.m. on May 30, 2018. *Id.*

## **CHAPTER 13 TRUSTEE’S STATUS UPDATE**

The Chapter 13 Trustee filed a Status Update on May 16, 2018. Dckt. 112. The Chapter 13 Trustee states that Debtor is \$1,264.00 delinquent on plan payments and has not yet filed an amended plan following denial of the prior proposed plan.

## **RULING**

A review of the docket shows that Debtor has not filed a new amended 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.

17. [17-25091](#)-E-13      **JULIET DACPANO**      **MOTION TO DISMISS CASE**  
DPC-3                      **Pro Se**                      **3-12-18 [53]**

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

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Local Rule 9014-1(f)(1) Motion—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 March 12, 2018. By the court’s calculation, 79 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”) seeks dismissal of the case on the basis that Juliet Dacpano (“Debtor”) is \$2,100.00 delinquent in plan payments, which represents multiple months of the \$350.00 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); FED. R. BANKR. P. 4002(b)(2)(A). 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)(I); 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 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. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**Prior Recent Bankruptcy Cases Filed by Debtor**

A review of the court’s files disclose Debtor having filed the prior bankruptcy cases in this District:

- A. Chapter 13 Case 17-23475, *In Pro Se*
  - 1. Filed.....May 23, 2017
  - 2. Dismissed.....June 21, 2017
  
- B. Chapter 13 Case 16-25760, *In Pro Se*
  - 1. Filed.....August 30, 2016
  - 2. Dismissed.....December 22, 2016
  
- C. Chapter 7 Case 16-20579, *In Pro Se*
  - 1. Filed.....February 3, 2016
  - 2. Discharge Entered.....June 29, 2016
  
- D. Chapter 13 Case 10-27358, *In Pro Se*
  - 1. Filed.....March 24, 2010
  - 2. Dismissed.....April 12, 2010

The court notes that in Adversary Proceeding 17-2166, the U.S. Trustee has obtained a judgment imposing a prefiling review requirement for any further bankruptcy cases that Debtor may seek to file during the three-year period running from March 1, 2018. 17-2166; Judgment, Dckt. 31.

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.

18.

[18-21335-E-13](#)  
DPC-3

AUGUSTINE DEGUZMAN  
Pro Se

MOTION TO DISMISS CASE  
4-25-18 [\[29\]](#)

**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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on April 25, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Augustine DeGuzman ("Debtor") did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee. Debtor has not provided these forms. 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).

The Chapter 13 Trustee asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;

- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

The court notes that Debtor filed an Amended Plan on May 9, 2018, but it has not been served on any party, and Debtor has not set a confirmation hearing for the Amended Plan. Also, the Amended Plan does not address the various grounds raised by the Chapter 13 Trustee related to failing to provide documents.

### **Review of Amended Plan**

The proposed Amended Plan filed on May 9, 2018, requires monthly plan payments of \$120 for a period of thirty-six months. Dckt. 33. However, for the Class 1 Secured Claim of “Bayview,” the regular monthly post-petition installment is \$840.00, and the stated arrearage of \$66,000 would require an additional \$1,833.34 monthly cure payment over the thirty-six months. No provision is made for paying any other claims in the proposed Amended Plan.

Reviewing Schedules I and J, Debtor discloses:

- A. Debtor and her Spouse’s Gross Monthly Income is \$8,186.
- B. Debtor lists three children, with no ages stated, as dependents.
- C. Debtor has \$3,141 in monthly net income after expenses (which includes an \$800 per month credit card payment).

The Amended Plan is not confirmable, being grossly under-funded.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 27, 2018. 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 Toshiba Francois ("Debtor") is \$1,180.00 delinquent in plan payments, which represents multiple months of the \$238.00 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 May 15, 2018. Dckt. 71. Debtor's counsel argues in the Opposition that Debtor promises to cure the delinquency before the hearing date. Debtor has chosen not to provide (or refuses) his declaration under penalty of perjury explaining the reason for the many months of default and where such monies have been diverted. Debtor offers no explanation as to how, given the very small projected disposable income to fund the plan, he would be able to come up with six months of plan payments in one month to bring the plan current.

#### **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.

20. [18-21247-E-13](#)      **CHARLES HERNANDEZ**      **MOTION TO DISMISS CASE**  
**DPC-1**                      **Steele Lanphier**                      **4-25-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 25, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Charles Hernandez (“Debtor”) did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 bank account statements, and
- D. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C.

§ 521(a)(3). 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).

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’S OPPOSITION**

Debtor filed an Opposition on May 24, 2018. Dckt. 31. Debtor’s counsel argues in the Opposition that Debtor promises to file an amended plan before the hearing date. Debtor has chosen (or refuses) to provide a declaration explaining the failure to file the documents and reasons for the delay in prosecuting this case.

## **RULING**

Unfortunately for Debtor, a promise to file an amended 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.

21. [17-27751](#)-E-13 MISAEEL/LUZ BAUTISTA  
DPC-2 Harry Roth

CONTINUED MOTION TO DISMISS  
CASE  
2-27-18 [92]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 27, 2018. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

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

**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 Misael Bautista and Luz Maria Bautista (“Debtor”) are \$2,750.32 delinquent in plan payments, which represents multiple months of the \$2,251.44 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 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 February 13, 2018. 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).

## **MARCH 21, 2018 HEARING**

At the hearing, the Chapter 13 Trustee reported that the delinquency had been reduced to \$1,150.32. Dckt. 113. Based on the opposition presented at the hearing, the court continued the matter to 10:00 a.m. on May 30, 2018, for a final hearing. Dckt. 114.

## **CHAPTER 13 TRUSTEE'S STATUS UPDATE**

The Chapter 13 Trustee filed a Status Update on May 23, 2018. Dckt. 121. The Chapter 13 Trustee states that Debtor is delinquent \$4,153.20 and that an amended plan has not been filed.

## **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.

22. [13-23157-E-13](#) **HOSSEIN BAKTVAR AND LALEH MOTION TO DISMISS CASE**  
**DPC-5** **MOGHADAM** **4-20-18 [120]**  
**Peter Macaluso**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 20, 2018. By the court’s calculation, 40 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 Hossein Baktvar and Laleh Moghadam (“Debtor”) are \$560.00 delinquent in plan payments, which represents one month of the \$560.00 plan payment. The delinquent payment is for March 2018, the sixtieth month of the Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the Chapter13 Trustee argues that Debtor has not complied with the court’s order to pay \$16,200.00 to the Chapter 13 Trustee, delaying the Chapter 13 Trustee from complying with the same order and from disbursing \$15,000.00 to Trulite WSG, LLC (“Creditor”). *See* Dckt. 119.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on May 16, 2018. Dckt. 124. Debtor’s counsel argues in the Opposition that: (1) Debtor promises to cure the delinquency before the hearing date; (2) Debtor paid directly the \$15,000.00 (choosing to violate this court’s Order filed on March 12, 2018); and (3) the court should just continue the hearing. Debtor has chosen not to (or refuses to) provide a declaration as evidentiary support for counsel’s arguments.

Debtor’s counsel argues that Debtor had paid the \$15,000 to the creditor even before the Motion to Approve the Compromise (for the Creditor to be paid \$15,000) was filed. Opposition ¶ 2, Dckt. 124. However, as shown in the Civil Minutes from the hearing on the Motion to Approve Compromise:

“At the hearing, the Debtor agreed to pay \$16,200.00 to the Chapter 13 Trustee (\$15,000.00 settlement amount and additional Chapter 13 Trustee expenses estimated at 8%), with the settlement payment of \$15,000.00 to be made through the Chapter 13 Trustee.”

Civil Minutes, Dckt. 118.

Debtor has not done as ordered or as committed to at the hearing on the earlier Motion. Rather, Debtor offers the excuse that the money has not been paid by someone else.

Debtor requests that the hearing be continued while they coordinate payment of the settlement funds to the Chapter 13 Trustee.

### **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.

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

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Local Rule 9014-1(f)(1) Motion—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 March 21, 2018. By the court’s calculation, 70 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 Maria Andrichuk (“Debtor”) did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that the Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a 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 argues that this case may be filed in bad faith because this is Debtor’s fourth filing and does not address any debts in the proposed plan. Debtor lists a mortgage creditor on the creditor matrix, but she does not list that creditor on the Schedule D, instead placing the creditor on Schedule E/F. Debtor shows no rent or mortgage expense on Schedule J. The Chapter 13 Trustee believes that Debtor has clearly been filing bankruptcy cases to deal with a defaulted mortgage, but she does not propose plan terms to address the debt. *See* 11 U.S.C. § 1325(a)(7).

The court notes that an Amended Plan was filed on April 9, 2018, and while it lists Specialized Loan Servicing, LLC, in Class 1 in the monthly amount of \$350.00, there are numerous errors with the

Amended Plan demonstrating that considering dismissal is proper at this time. First, the Amended Plan has not been set for a confirmation hearing, and it has not been served on all creditors. Within the plan itself, the proposed monthly payment of \$120.00 is inadequate and conflicts with the minimum of \$350.00 that is proposed in Class 1. Additionally, a dividend to unsecured claims is proposed, and no administrative expenses are proposed.

The Amended Plan appears to have been filed in response to issues raised by the Chapter 13 Trustee and creditors in this case, but what has been proposed is still far short of demonstrating that this case is being prosecuted diligently.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 Siang Peters (“Debtor”) is \$26,280.24 delinquent in plan payments, which represents multiple months of the \$8,660.24 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 May 2, 2018. Dckt. 20. Debtor promises to cure the delinquency before the hearing date. In her Declaration, Debtor states that the payments are in default because her spouse’s income is always consistent throughout the year.

**RULING**

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Cause exists to dismiss this case. Additionally, an “inconsistency” in business income does not explain how Debtor can have \$35,000 of disposable income in one month to make four monthly plan payments in that one month.

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. [17-25234-E-13](#)      **YVONNE JOHNSON**      **MOTION TO DISMISS CASE**  
**DPC-3**                      **Stacie Power**                      **4-12-18 [67]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 12, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Yvonne Johnson (“Debtor”) did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on February 27, 2018. A review of the docket shows that Debtor has filed an amended plan but no 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).

The Amended Plan was filed on May 7, 2018, but there is no evidence that it has been served on any creditor or other party to this case, and Debtor has not filed a motion to confirm with a hearing date for the Amended Plan.

A review of the proposed Amended Plan (Dckt. 73) discloses that plan payments of \$17,692.36 would be required through May 2018, and then, Debtor would make payments of \$2,835 per month for the remaining fifty-one months of the Plan.

Reviewing Amended Schedule I, Debtor lists having \$5,017.45 in net income from rental property or business, but she fails to attach the required gross income and expense statement showing how such net amount is computed. Dckt. 48. On Amended Schedule I, Debtor states that there is a \$500 per month “new husband contribution to household” income item, but Debtor fails to disclose the actual income that her husband is bringing into the family unit.

On original Schedule J (no amended or supplemental has been filed), Debtor lists monthly household expenses of (\$3,051.61). Dckt. 28 at 18–19. In her plan, Debtor provides for paying all of the housing expense. With a monthly income of \$5,500 and expenses of (\$3,051), Debtor is unable to make a \$2,800+ monthly plan payment. Additionally, it appears that Debtor may be using this case to subsidize her husband’s living expenses, diverting his income around the bankruptcy case (by not disclosing it) and choosing to have her creditors with unsecured claims (for whom the Amended Plan provides for a 0.00% dividend) pay her husband’s expenses.

**Multiple Repeat Bankruptcy Filings by Debtor**

Debtor is not new to the bankruptcy court in this District, having filed five prior cases since May of 2012. These cases are summarized as follows.

<p><b>Chapter 13 Case 16-27599</b>  <b>Counsel: Same as Current Case</b></p>	
<p style="text-align: right;">Filed: November 16, 2016  Dismissed February 1, 2017</p> <p>Grounds for Dismissal:</p> <ol style="list-style-type: none"> <li>1. \$1,620 Delinquency in Payments</li> <li>2. Plan Not Served on Creditors</li> <li>3. Business Information Not Provided to Trustee</li> <li>4. Date of Business Operation Not Disclosed</li> </ol> <p>16-27599; Civil Minutes, Dckt. 28.</p>	
<p><b>Chapter 13 Case 16-22994</b>  <b>Counsel: Same as Current Case</b></p>	

Filed: May 8, 2016 Dismissed: June 7, 2016	
Grounds for Dismissal:	
1. Failure to File Schedules, Statement of Financial Affairs, and Chapter 13 Plan.	
<b>Chapter 13 Case 14-22304</b> <b>Counsel: <i>Pro Se</i>, and Same as Current Case</b>	
Filed: March 6, 2014 Dismissed: October 19, 2015	
Grounds for Dismissal:	
1. Proposed Plan Term of 103 months, exceeding the 60 month maximum.	
14-22304; Civil Minutes, Dckt. 39.	
<b>Chapter 13 Case 13-34753</b> <b>Counsel: <i>Pro Se</i></b>	
Filed: November 19, 2013 Dismissed: December 9, 2013	
Grounds for Dismissal:	
1. Failure to File Schedules I and J Timely.	
Motion to Vacate Dismissal Denied	
13-24753; Order, Dckt. 29.	
<b>Chapter 7 Case 12-29270</b> <b>Counsel: <i>Pro Se</i></b>	
Filed: May 14, 2012 Discharge Entered: November 19, 2012	

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. [17-25354](#)-E-13      **PETER/ALISON BIPPART**      **MOTION TO DISMISS CASE**  
DPC-4                      **Eric Schwab**                      **4-19-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 19, 2018. 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”) notes that in response to the Chapter 13 Trustee’s prior motion to dismiss, Peter Bippart and Alison Bippart (“Debtor”) stated that they would file a motion to incur debt, an amended plan, and a motion to confirm the plan. *See* Dckt. 41. The Chapter 13 Trustee notes that none of those have been filed. 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 failed to timely provide the Chapter 13 Trustee with business documents including:

- A. 2015 tax returns,
- B. Six months of bank account statements,
- C. Information regarding Capital One Investing reduction in value of \$20,729.33,
- D. Wells Fargo Bank Account #6122 listed on the questionnaire but not listed on Schedule B,
- E. Information regarding the Surgical Design Innovations LLC status of patent-pending surgical device, and
- F. Documents regarding a Sub S Corporation or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). 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 RESPONSE**

Debtor filed a Response on May 8, 2018. Dckt. 51. Debtor promises to an amended plan before the hearing date and set it for hearing on July 17, 2018.

## **CHAPTER 13 TRUSTEE'S REPLY**

The Chapter 13 Trustee filed a Reply on May 15, 2018. Dckt. 53. The Chapter 13 Trustee states that there has been no explanation for the delay, and he is uncertain whether a confirmation hearing in mid-July is reasonable given that this case was filed on August 14, 2017, with a plan filed in September 2017 that was never served.

## **CREDITOR'S REPLY**

Vance Link and Marissa Link ("Creditor") filed a Reply on May 23, 2018. Dckt. 55. Creditor reports that Debtor had promised to obtain a loan from Debtor's employer that would pay the debt owed to Creditor, but acquiring that loan has not happened over several months.

Creditor argues that Debtor has represented before that there would be additional motions filed, only for those motions not to be filed. Creditor believes that additional business documents or tax returns may not have been filed by Debtor, and Creditor urges the court to dismiss this case.

## **RULING**

Unfortunately for Debtor, a promise to file an amended 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.

**APPEARANCE OF CAROLYN HEUSTESS,  
THE CHAPTER 13 DEBTOR, REQUIRED AT THE HEARING**

**NO TELEPHONIC APPEARANCE PERMITTED**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 2, 2018. By the court’s calculation, 28 days’ notice was provided. The court set the hearing for 10:00 a.m. on May 30, 2018. Dckt. 40.

The Order to Show Cause 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 Order to Show Cause is sustained, and the court shall enter a prefiling review order.**

Carolyn Heustess (“Debtor”) filed this Chapter 13 bankruptcy case, No. 18-20621 on February 5, 2018. The court has identified the below listed prior bankruptcy cases having been filed by Debtor and her non-filing spouse (James Heustess), which were dismissed for failure to comply with the basic obligations arising under the Bankruptcy Code:

- A. Chapter 13 Case No. 17-26764
  - 1. Filed.....October 12, 2017

2. Dismissed.....December 20, 2017
  3. Case Dismissed Due to Debtor's Failure to Pay Filing Fee Installment.
- B. Chapter 13 Case No. 16-27235
1. Filed.....October 31, 2016
  2. Dismissed.....January 22, 2017
  3. Case Dismissed Due to: (1) Debtor's failure to attend First Meeting of Creditors; (2) Debtor's failure to provide income documentation; and (3) Debtor's failure to provide copies of tax returns. 16-27235; Civil Minutes, Dckt. 32.
- C. Chapter 13 Case No. 16-26379
1. Filed.....September 26, 2016
  2. Dismissed.....October 14, 2016
  3. Case Dismissed Due to Debtor's Failure to File Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other documents.
- D. Chapter 13 Bankruptcy Case No. 17-26026
1. Filed.....September 11, 2017
  2. Dismissed.....September 29, 2017
  3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
  4. James Heustess Filed a Chapter 13 Plan in Case No. 17-26026. The Plan proposed payments of \$200.00 per month for thirty-five months. 17-26026; Chapter 13 Plan, Dckt. 9. James Heustess's Plan is left blank, with no provision for paying any creditor claims.
- E. Chapter 13 Bankruptcy Case No. 17-22215
1. Filed.....April 3, 2017
  2. Dismissed.....April 21, 2017
  3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
  4. James Heustess Filed a Chapter 13 Plan in Case No. 17-22215. The Plan proposed payments of \$100.00 a month for thirty-six months. 17-22215; Chapter 13 Plan, Dckt. 8. James Heustess' Plan is left blank, with no provision for paying any creditor claims.

- F. Chapter 13 Bankruptcy Case No. 16-25122
  - 1. Filed.....August 4, 2016
  - 2. Dismissed.....August 22, 2016
  - 3. Dismissed Due to James Heustess’s Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.
  
- G. Chapter 13 Bankruptcy Case No. 15-29595
  - 1. Filed.....December 14, 2015
  - 2. Dismissed.....January 14, 2016
  - 3. Dismissed Due to James Heustess’s Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.

The court has further identified that in filing her various cases, Debtor and her husband requested and were authorized in their respective cases to pay the required filing fees in installments in each of the above cases, however, she and her husband failed to make any installments, resulting in the following unpaid filing fees:

- A. Case No. 18-20621, Chapter 13 filing fee of \$310.00;
- B. Case No. 17-26764, Chapter 13 filing fee of \$310.00;
- C. Case No. 16-27235, remaining Chapter 13 filing fee of \$230.00;
- D. Case No. 16-26379, Chapter 13 filing fee of \$310.00;
- E. Case No. 17-26026, Chapter 13 filing fee of \$310.00;
- F. Case No. 17-22215, Chapter 13 filing fee of \$310.00;
- G. Case No. 16-25122, Chapter 13 filing fee of \$310.00; and
- H. Case No. 15-29595, Chapter 13 filing fee of \$310.00.

In the current case, the court sustained the Chapter 13 Trustee’s Objection to Confirmation of the proposed Chapter 13 Plan. Civil Minutes, Dckt. 37. The Objection includes Debtor’s failure to perform the basic minimum actions, such as attending the First Meeting of Creditors, that are required of a debtor filing and prosecuting a case in good faith.

**Additional Bankruptcy Case Filings**

Debtor’s subsequent Request to Dismiss this case (while the Order to Show Cause is pending) caused the court to further review the file. Rather than entering the case number, the court just entered the last name, Heustess, figuring that is a unique enough name that a limited universe of cases would come up. In addition to Debtor and James Matthew Heustess being listed, a third repeat “Heustess filer” appeared—a Patricia Heustess.

Patricia Heustess has filed, and had dismissed for failure to prosecute, the following cases:

- A. Chapter 13 Case No. 17-25316
1. Filed.....August 11, 2017
  2. Dismissed.....August 29, 2017
  3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that she receives contributions from her son, James Heustess.
- B. Chapter 13 Case No. 17-23135
1. Filed..... May 8, 2017
  2. Dismissed.....May 26, 2017
  3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that she receives contributions from her son, James Heustess.
- C. Chapter 13 Case No. 15-25376
1. Filed.....July 6, 2015
  2. Dismissed.....September 17, 2015
  3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  4. On Schedule A, Patricia Carolyn Heustess states that she owns the Los Robles Blvd. property, with no other owners identified. 15-25376, Dckt. 1.
- D. Chapter 13 Case No. 15-22571
1. Filed.....March 31, 2015
  2. Dismissed.....April 20, 2015
  3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that James Heustess pays her \$500.00 a month in rent.
- E. Chapter 13 Case No. 13-27956
1. Filed.....June 12, 2013
  2. Dismissed.....October 5, 2013
  3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.

4. On Schedule A, Patricia Heustess lists only the 1615 Los Robles Property as real property in which she has an interest.

F. Chapter 13 Case No. 12-41550

1. Filed.....December 17, 2012
2. Dismissed.....February 25, 2013
3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.
4. On Schedule A, Patricia Heustess states that she has no interest in any real property. 12-41550, Dckt. 1 at 23.
5. Though not listing any property on Schedule A, Patricia Heustess's Chapter 13 Plan has her making \$1,524.00 post-petition monthly mortgage payments and curing a \$15,250.00 arrearage. *Id.*, Dckt. 7.

G. Chapter 13 Case No. 12-33064

1. Filed.....July 16, 2012
2. Dismissed.....September 7, 2012
3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.
4. On Schedule A, Patricia Heustess states that she owns the real property at 1615 Los Robles Blvd., Sacramento, California. 12-33064, Dckt. 1 at 25.

The court has created the following chart showing the overlapping filing scheme of the three debtors:

Carolyn Heustess	Dates Case Filed or Dismissed	James Heustess	Patricia Carolyn Heustess
18-20621 Status	Pending		
18-20621 Filed	February 5, 2018		
17-26764 Dismissed	December 20, 2017		
17-26764 Filed	October 12, 2017		
	September 29, 2017	17-26026 Dismissed	

	September 11, 2017	17-26026 Filed	
	August 29, 2017		17-25316 Dismissed
	August 11, 2017		17-25316 Filed
	May 26, 2017		17-23135 Dismissed
	May 8, 2017		17-23135 Filed
	April 21, 2017	17-22215 Dismissed	
	April 3, 2017	17-22215 Filed	
16-27235 Dismissed	January 22, 2017		
16-27235 Filed	October 31, 2016		
16-26379 Dismissed	October 10, 2016		
16-26379 Filed	September 26, 2016		
	August 22, 2016	16-25121 Dismissed	
	August 4, 2016	16-25121 Filed	
	January 4, 2016	15-29595 Dismissed	
	December 14, 2015	15-29595 Filed	
	September 17, 2015		15-25376 Dismissed
	July 6, 2015		15-25376 Filed
	April 20, 2015		15-22571 Dismissed

	March 31, 2015	15-22571 Filed
	October 5, 2013	13-27956 Dismissed
	June 12, 2013	13-27956 Filed
	February 25, 2013	12-41550 Dismissed
	December 12, 2012	12-41550 Filed
	September 7, 2012	12-33064 Dismissed
	July 16, 2012	12-33064 Filed

As opposed to the innocent-but-mistaken filing of bankruptcy a time or two by a debtor, the above chart shows a coordinated pattern of Debtor, James Heustess, and Patricia Carolyn Heustess in repeatedly filing bankruptcy cases that they, and each of them, fail (or never intend) to prosecute in good faith. The above appears to be an “automatic stay” industry built by these three individuals in their coordinated bankruptcy filings.

### **PREFILING REVIEW INJUNCTION**

The bankruptcy courts are established by an act of Congress and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. § 105 provide the bankruptcy courts with the inherent power to enter prefiling orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v. Reid, Murdock & Co.*, 177 F. 684 (7th Cir. 1910); *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999); *In re Bialac*, 15 B.R. 901 (B.A.P. 9th Cir. 1981), *aff’d* 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. § 105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. That power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. § 105 or the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 2007); *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for prefiling review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. 500 F.3d 1047; *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a prefiling review requirement is not to be entered with undue haste because such orders can tread on a litigant's due process right of access to the courts. As discussed by the Supreme Court, the right to seek redress from the court is a protected right of civil litigants. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982). The issuing of a prefiling order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148; see *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

500 F.3d at 1057.

The court is cognizant of the significant impact the filing of a bankruptcy case has not only on Debtor, but on creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in 11 U.S.C. § 362(c)(3) and § 362(c)(4), the automatic stay does not go into effect, the presentation of a filed bankruptcy petition and the significant sanctions imposed on someone violating the stay can work to improperly prevent creditors from legitimately enforcing their rights.

### **Issuance of Prefiling Review Order**

Debtor, and Debtor's husband, have each filed a series of non-productive Chapter 13 cases, which do not appear to have been filed for any *bona fide* purpose. Debtor has been afforded multiple opportunities to advance a Chapter 13 plan to cure defaults on the obligation owing to creditors and restructure the debt through the Chapter 13 plan. While obtaining the benefit of the automatic stay, whether actually or improperly represented to exist, Debtor has been unable or has refused to properly prosecute a Chapter 13 Plan.

Even if Debtor is "innocently" being led into a bankruptcy scheme, she is demonstrating that she, as well as her husband, has not heretofore been able to prosecute a bankruptcy case, or even to accurately complete the bankruptcy schedules and statement of financial affairs. This has led to Debtor squandering her valuable bankruptcy rights, as well as potentially committing a fraud on the court and creditors. In addition, the making of false statements under penalty of perjury could subject Debtor to both civil and criminal sanctions, penalties, and prosecutions.

A prefiling review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require Debtor (whether represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and, on their face, appear to be completed consistent with the requirements of the Bankruptcy Code and Chapter under which Debtor seeks to file bankruptcy. It imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings

need to be prepared at the time of filing regardless of whether a pre-filing review exists. The ability to file rests solely with Debtor, requiring Debtor to do and comply with only what the Bankruptcy Code requires.

It also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continue to flounder and squander rights under the Bankruptcy Code.

The court shall issue a Chamber Order (not 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.

Upon review of the files in this case, the files for the prior multiple bankruptcy cases that have been filed by Carolyn Heustess (“Debtor”) and her spouse and that have been dismissed for failure to prosecute, the Order to Show Cause having been presented to the court, upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Debtor is enjoined from filing any bankruptcy cases for a period of for years, commencing May 30, 2018, unless prior authorization is obtained from the Chief Bankruptcy Judge in the District in which she desires to file a bankruptcy case. In obtaining such approval, the documentation provided by Debtor to the chief bankruptcy judge shall include:

1. Copies of accurately and completely filled out schedules and the statement of financial affairs;
2. Copies of the tax returns required to be turned over to the Trustee as provided in 11 U.S.C. § 521(e)(2)(A) and Federal Rule of Bankruptcy Procedure 4002; and
3. Copy of proposed plan, which shall be on the then current form required in the District in which Debtor desires to file a Chapter 11 or Chapter 13 bankruptcy case;

**IT IS FURTHER ORDERED** that Debtor shall pay all future filing fees at the time a new case is commenced, and shall not be permitted to obtain a fee waiver or authorization to pay a filing fee in installments.

**IT IS FURTHER ORDERED** that the Clerk of the Bankruptcy Court, and deputy clerks operating under the direction and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Debtor during the four-year period of the injunction issued in this order, if there is not prior authorization from the Chief Bankruptcy Judge for the District.

28. [18-20621](#)-E-13 CAROLYN HEUSTESS  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-12-18 [21]**

**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 March 14, 2018. The court computes that 77 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 March 7, 2018.

**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.

**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 April 13, 2018. The court computes that 47 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 April 6, 2018.

**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.

30. [18-20621](#)-E-13 CAROLYN HEUSTESS  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-11-18 [50]**

**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 May 13, 2018. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 7, 2018.

**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.

**APPEARANCE OF CAROLYN HEUSTESS,  
THE CHAPTER 13 DEBTOR, REQUIRED AT THE HEARING  
NO TELEPHONIC APPEARANCE PERMITTED**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 7, 2018. By the court’s calculation, 23 days’ notice was provided. The court set the initial hearing for 10:00 a.m. on May 30, 2018. Dckt. 48.

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 to Dismiss is granted, and the bankruptcy case is dismissed.**

The above bankruptcy case was commenced by Carolyn Heustess (“Debtor”) on February 5, 2018. This is not the only recent bankruptcy case by Debtor, or by her husband, that has been filed and then dismissed for lack of prosecution. On April 30, 2018, the court issued an Order to Show Cause why a pre-filing review order should not be issued with respect to further bankruptcy filings by Debtor. Dckt. 40.

Debtor has now filed an *ex parte* request to dismiss this Chapter 13 case. Dckt. 47. In the request, Debtor’s statements include the following:

- A. At the April 17, 2018 hearing, it was “strongly recommended” that Debtor seek the advice of counsel.
- B. Debtor has consulted with two attorneys, with both advising her to dismiss the current case.
- C. Debtor and her husband are disabled, and they seek to “clear a debt” they are “inheriting.”<sup>1</sup>
- D. Debtor “begs” the court for forgiveness and requests the bankruptcy case be dismissed.
- E. Debtor states that she and her husband do not “plan” to file any bankruptcy cases in the “foreseeable future.”

*Id.*

**Summary of Prior Cases Filed**

In the Order to Show Cause, the court reviewed recent filings, and dismissals, of Debtor and her husband:

- A. Chapter 13 Case No. 17-26764
  - 1. Filed.....October 12, 2017
  - 2. Dismissed.....December 20, 2017
  - 3. Case Dismissed Due to Debtor’s Failure to Pay Filing Fee Installment.
- B. Chapter 13 Case No. 16-27235
  - 1. Filed.....October 31, 2016
  - 2. Dismissed.....January 22, 2017
  - 3. Case Dismissed Due to: (1) Debtor’s failure to attend First Meeting of Creditors; (2) Debtor’s failure to provide income documentation; and (3) Debtor’s failure to provide copies of tax returns. 16-27235; Civil Minutes, Dckt. 32.
- C. Chapter 13 Case No. 16-26379

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<sup>1</sup> This is a curious statement to be made by someone who has consulted with attorneys and is now properly informed as to her legal rights and responsibilities. A person does not “inherit” debt. Rather, people inherit assets. Possibly, such assets are encumbered, thus the inherited asset may be collateral for an obligation of the divisor.

1. Filed.....September 26, 2016
2. Dismissed.....October 14, 2016
3. Case Dismissed Due to Debtor's Failure to File Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other documents.

D. Chapter 13 Bankruptcy Case No. 17-26026

1. Filed.....September 11, 2017
2. Dismissed.....September 29, 2017
3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
4. James Heustess Filed a Chapter 13 Plan in Case No. 17-26026. The Plan proposed payments of \$200.00 per month for thirty-five months. 17-26026; Chapter 13 Plan, Dckt. 9. James Heustess's Plan is left blank, with no provision for paying any creditor claims.

E. Chapter 13 Bankruptcy Case No. 17-22215

1. Filed.....April 3, 2017
2. Dismissed.....April 21, 2017
3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, and other required documents.
4. James Heustess Filed a Chapter 13 Plan in Case No. 17-22215. The Plan proposed payments of \$100.00 a month for thirty-six months. 17-22215; Chapter 13 Plan, Dckt. 8. James Heustess' Plan is left blank, with no provision for paying any creditor claims.

F. Chapter 13 Bankruptcy Case No. 16-25122

1. Filed.....August 4, 2016
2. Dismissed.....August 22, 2016
3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.

G. Chapter 13 Bankruptcy Case No. 15-29595

1. Filed.....December 14, 2015
2. Dismissed.....January 14, 2016
3. Dismissed Due to James Heustess's Failure to file Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other required documents.

Order to Show Cause, Dckt. 40.

On the Bankruptcy Petition, Debtor states that she lives at 1828 Los Robles Blvd., Sacramento, California. Dckt. 1 at 2. On Schedule A, Debtor states that she and one other person own an interest in that property. Dckt. 17 at 2.

### **Additional Bankruptcy Case Filings**

Debtor's current Request to Dismiss this case (while the Order to Show Cause is pending) caused the court to review the file. Rather than entering the case number, the court just entered the last name, Heustess, figuring that is a unique enough name that a limited universe of cases would come up. In addition to Debtor and James Matthew Heustess being listed, a third repeat "Heustess filer" appeared—a Patricia Heustess.

Patricia Heustess has filed, and had dismissed for failure to prosecute, the following cases:

- A. Chapter 13 Case No. 17-25316
  - 1. Filed.....August 11, 2017
  - 2. Dismissed.....August 29, 2017
  - 3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  - 4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that she receives contributions from her son, James Heustess.
  
- B. Chapter 13 Case No. 17-23135
  - 1. Filed..... May 8, 2017
  - 2. Dismissed.....May 26, 2017
  - 3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  - 4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that she receives contributions from her son, James Heustess.
  
- C. Chapter 13 Case No. 15-25376
  - 1. Filed.....July 6, 2015
  - 2. Dismissed.....September 17, 2015
  - 3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  - 4. On Schedule A, Patricia Carolyn Heustess states that she owns the Los Robles Blvd. property, with no other owners identified. 15-25376, Dckt. 1.

- D. Chapter 13 Case No. 15-22571
1. Filed.....March 31, 2015
  2. Dismissed.....April 20, 2015
  3. Address of Patricia Carolyn Heustess....1828 Los Robles Blvd., Sacramento, California.
  4. On the Statement of Financial Affairs, Patricia Carolyn Heustess states that James Heustess pays her \$500.00 a month in rent.
- E. Chapter 13 Case No. 13-27956
1. Filed.....June 12, 2013
  2. Dismissed.....October 5, 2013
  3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.
  4. On Schedule A, Patricia Heustess lists only the 1615 Los Robles Property as real property in which she has an interest.
- F. Chapter 13 Case No. 12-41550
1. Filed.....December 17, 2012
  2. Dismissed.....February 25, 2013
  3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.
  4. On Schedule A, Patricia Heustess states that she has no interest in any real property. 12-41550, Dckt. 1 at 23.
  5. Though not listing any property on Schedule A, Patricia Heustess's Chapter 13 Plan has her making \$1,524.00 post-petition monthly mortgage payments and curing a \$15,250.00 arrearage. *Id.*, Dckt. 7.
- G. Chapter 13 Case No. 12-33064
1. Filed.....July 16, 2012
  2. Dismissed.....September 7, 2012
  3. Address of Patricia Heustess is listed as 1615 Los Robles, Blvd., Sacramento, California.
  4. On Schedule A, Patricia Heustess states that she owns the real property at 1615 Los Robles Blvd., Sacramento, California. 12-33064, Dckt. 1 at 25.

The court has created the following chart showing the overlapping filing scheme of the three debtors:

Carolyn Heustess	Dates Case Filed or Dismissed	James Heustess	Patricia Carolyn Heustess
18-20621 Status	Pending		
18-20621 Filed	February 5, 2018		
17-26764 Dismissed	December 20, 2017		
17-26764 Filed	October 12, 2017		
	September 29, 2017	17-26026 Dismissed	
	September 11, 2017	17-26026 Filed	
	August 29, 2017		17-25316 Dismissed
	August 11, 2017		17-25316 Filed
	May 26, 2017		17-23135 Dismissed
	May 8, 2017		17-23135 Filed
	April 21, 2017	17-22215 Dismissed	
	April 3, 2017	17-22215 Filed	
16-27235 Dismissed	January 22, 2017		
16-27235 Filed	October 31, 2016		
16-26379 Dismissed	October 10, 2016		
16-26379 Filed	September 26, 2016		

	August 22, 2016	16-25121 Dismissed	
	August 4, 2016	16-25121 Filed	
	January 4, 2016	15-29595 Dismissed	
	December 14, 2015	15-29595 Filed	
	September 17, 2015		15-25376 Dismissed
	July 6, 2015		15-25376 Filed
	April 20, 2015		15-22571 Dismissed
	March 31, 2015		15-22571 Filed
	October 5, 2013		13-27956 Dismissed
	June 12, 2013		13-27956 Filed
	February 25, 2013		12-41550 Dismissed
	December 12, 2012		12-41550 Filed
	September 7, 2012		12-33064 Dismissed
	July 16, 2012		12-33064 Filed

As opposed to the innocent-but-mistaken filing of bankruptcy a time or two by a debtor, the above chart shows a coordinated pattern of Debtor, James Heustess, and Patricia Carolyn Heustess in repeatedly filing bankruptcy cases that they, and each of them, fail (or never intend) to prosecute in good faith. The above appears to be an “automatic stay” industry built by these three individuals in their coordinated bankruptcy filings.

The present Motion to Dismiss raises serious questions for Debtor, as well as now for James Heustess and Patricia Carolyn Heustess. The court will not summarily dismiss this case (which dismissal would not limit this court’s exercise of judicial power on the Order to Show Cause) in light of the repeated filings and the apparent coordinated filings by the three individuals.

At the hearing, Debtor reported that cause exists to dismiss this case because **XXXXXXXXXX**.

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

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

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

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

32. **18-20621-E-13      CAROLYN HEUSTESS      MOTION TO DISMISS CASE**  
**DPC-2                      Pro Se                                              3-22-18 [28]**

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

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Local Rule 9014-1(f)(1) Motion—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 March 22, 2018. By the court’s calculation, 69 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 Carolyn Heustess (“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)(I); 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 argues that Debtor has not correctly utilized the Chapter 13 Plan standard form. Local Rule 3015-1(a) states that the mandatory form plan EDC 003-080 shall be utilized as the standard form. According to the Court's website form EDC 003-080-12 is effective December 1, 2017. The Debtor filed her plan using EDC 3-080, May 1, 2012.

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 RULINGS

33. [18-20738-E-13](#)      **TAUJAI CAREY**      **MOTION TO DISMISS CASE**  
**DPC-2**      **Richard Jare**      **3-29-18 [37]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

**The Motion to Dismiss is dismissed without prejudice, the court having confirmed the Chapter 13 Plan in this case by order filed on May 24, 2018.**

David Cusick (“the Chapter 13 Trustee”) argues that Taujai Carey (“Debtor”) did not commence making plan payments and is \$222.00 delinquent in plan payments, which represents one month of the \$222.00 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’S OPPOSITION

Debtor filed an Opposition on May 16, 2018. Dckt. 48. Debtor indicates that she has cured some of the delinquency by making the March 25, 2018 payment. Debtor argues that there has been recent medical hardship. Debtor states that an amended plan may be proposed before the hearing date.

### RULING

On May 24, 2018, the court entered its order confirming the Chapter 13 Plan in this case. Dckt. 56. With confirmation of this Plan, the grounds for the present Motion are moot (the Chapter 13 Trustee concurring in the entry of the confirmation order and lodging it with the court being a representation that no defaults in plan payments exist).

The Motion is dismissed without prejudice.

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



specifically for 2016. *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 reports that Debtor failed to disclose on the petition the following four prior bankruptcy cases:

- A. Case No. 11-30525
- B. Case No. 14-27048
- C. Case No. 15-20897
- D. Case No. 15-24979

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition. Debtor has since amended the petition to list the four cases. Dckt. 62 at 9.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on January 3, 2018. Dckt. 63. Debtor promises to file an amended plan before the hearing date and to provide the Chapter 13 Trustee with her 2016 tax return. Debtor also reports that the petition has been amended to address the missing cases.

## **CHAPTER 13 TRUSTEE'S STATUS REPORT**

The Chapter 13 Trustee filed a Status Report on February 8, 2018. Dckt. 96. He states that this Motion to Dismiss has not been resolved by the filing of the Amended Plan. The Chapter 13 Trustee states that he is opposing confirmation and that Debtor does not appear to be making a legitimate attempt to confirm a plan in this case.

## **FEBRUARY 21, 2018 HEARING**

At the hearing, Debtor's counsel addressed the lack of Debtor having to pay any state or federal taxes on her annual income as being based, after his due diligence investigation and good faith statement of applicable law. He also addressed how the response was lacking in explanation for how a professionally licensed real estate agent would in good faith state under penalty of perjury that she had no obligation to pay state and federal taxes. Dckt. 107.

The court continued the hearing to 10:00 a.m. on May 30, 2018. Dckt. 113.

## **RULING**

As the Chapter 13 Trustee has noted, Debtor has had four prior recent bankruptcy cases. Three of these were with the assistance of counsel, and only one *pro se*. In dismissing the most recent prior case (in which Debtor was represented by counsel), the court found:

“The Trustee argues that the Debtor did not commence making plan payments and is \$5,608.00 delinquent in plan payments, which represents multiple

months of the \$2,804.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case for failure to commence plan payments. The motion is granted and the case is dismissed.”

15-24979; Civil Minutes, Dckt. 44.

In dismissing the case before that, filed in *pro se*, the court’s findings include:

“The Chapter 13 Trustee seeks dismissal of Debtor’s case on the basis that Debtor is causing unreasonable delay prejudicial to creditors. 11 U.S.C. § 1307(c).

1. Debtor is \$5,292 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,646 is due on May 25, 2015. Debtor has paid \$0 into the plan to date.

2. Trustee’s objection to confirmation was heard and sustained on April 21, 2015. Debtor has not filed a subsequent amended plan or motion to confirm plan.

On June 9, 2015, Debtor filed her own motion to dismiss the Chapter 13 case. Dckt. 33. The Motion does not state any reason Debtor say wants to dismiss the case. . .

...

Cause exists to dismiss this case. The motion is granted and the case is dismissed.”

15-20897; Civil Minutes, Dckt. 34.

The case before that, 14-27048, the case was dismissed due to Debtor’s failure/inability to confirm a Chapter 13 Plan, notwithstanding the assistance of counsel. 14-27048; Order, Dckt. 35.

Debtor filed her Second Amended Plan on January 10, 2018. Dckt. 69. January 2010 is the seventh month of this Chapter 13 case. For the first five months of this case, Debtor is to fund the Plan with the aggregate sum of \$4,400.00, and then months six through sixty of the Plan fund it with \$2,040 per month. Plan ¶ 2.01, Dckt. 69. For the Class 1 Claim treatment, Debtor will be making a monthly payment of \$517.00 for the \$28,405.77 post-petition arrearage on the Wells Fargo Bank, N.A. secured claim. For the \$256,806.77 pre-petition arrearage, Debtor will make a \$930.00 “adequate protection payment” while diligently prosecuting a loan modification. Plan Additional Provisions ¶¶ 6.05-6.07, *Id.* These Plan Additional Provisions also disclose that the regular contractual monthly payment for this debt is \$5,681.04. These Additional Provisions include the “standard” Ensminger Loan Modification terms.

On Schedule I, Debtor states under penalty of perjury that she is employed in real estate, having been so employed for twenty-one years. Dckt. 27 at 1. Debtor states her gross monthly income is \$6,000, from which there is no withholding for income taxes, Social Security, or other standard employee withholdings. *Id.* In the note at the bottom of Schedule I as to whether Debtor anticipates an increase in income, Debtor states under penalty of perjury that she anticipates her income increasing because:

“Alta Realty Group Ca Change: The Housing Market Is Picking Up Again, After The Crash.”

*Id.* It appears that in Debtor’s real estate world the real estate “crash” has extended through 2017 and is only starting to improve in August 2017. That is inconsistent with every other case that has been presented to this court over the past four years, during which time the California real estate market has roared back.

On her Amended and Supplemental Schedule J (Debtor having checked the boxes for the filing somehow being both amended and supplemental), Debtor states having monthly expenses of \$3,500.00. Dckt. 121 at 5. Debtor reduces her monthly mortgage expense for her residence from being only \$1,717.00 to \$0.00. *Id.* While listing her forty-five-year old son as a dependent, she states having a monthly food and housekeeping supply expense of \$600.00 per month. *Id.* This is not credible, appearing to be highly unreasonable for two adults.

There is a missing expense that indicates that Debtor’s finances are not as stated. No provision is made for Debtor to pay:

- A. Any Federal Income Tax
- B. Any State of California Income Tax
- C. Any Social Security Tax
- D. Any Self-Employment Tax
- E. Any Unemployment Tax

Debtor, with a purported income of \$72,000 per year, Debtor fails to provide any basis for being exempt from the state and federal taxes that burden every other working person.

Beginning in January 2018, Debtor is required to pay all of her projected disposable income, to fund the Plan, with Debtor only making an adequate protection payment to Wells Fargo Bank, N.A. If Debtor has to pay \$1.00 of federal or state taxes, by Debtor’s own statement of finances, she will default in the plan payments. It appears that Debtor’s state and federal taxes will be well in excess of \$1.00 in light of her having at least \$72,000 per year in gross income.

On February 14, 2018, Debtor and her counsel filed Amended Schedule I. Dckt. 99. Debtor increases her income to \$6,170.00 per month. While reducing her income from her real estate business to \$4,560 per month, she now discloses receiving \$1,610.00 per month in Social Security Income. *Id.* at 5. In

her business income and expense attachment, she lowers her monthly gross income to \$5,000, and has (\$440) in expenses. *Id.* at 6.

Debtor no longer skips listing expenses for taxes, now showing a monthly expense of \$150.00 for income taxes. Dckt. 121 at 5.

**Chapter 13 Trustee's Opposition to Motion to Confirm, Dckt. 93.** The Chapter 13 Trustee's Opposition includes the lack of Debtor disclosing her personal property assets on Schedule A/B. The Chapter 13 Trustee also notes Debtor excluding any expense for state and federal taxes relating to her \$72,000 per year income.

HSBC Bank, N.A., Trustee for the Wells Fargo Bank, N.A. claim, also filed an opposition. The Opposition restates there being a \$256,806.77 pre-petition arrearage. While HSBC Bank, N.A. chaffs at the adequate protection provisions of the proposed plan (ignoring that it holds the key to such terms by filing a motion for relief from the stay, and such relief not being contingent on the loan modification process being completed), it asserts that Debtor is unable to make the plan payments.

**Proofs of Claims.** The Wells Fargo Bank, N.A. claim for which there is a \$256,806.77 pre-petition arrearage, is stated to be a claim totaling \$956,617.00. Proof of Claim No. 5. From the Attachments to Proof of Claim No. 5, it appears that the defaults in payments go back to 2009.

The Internal Revenue Service has filed its proof of claim for \$15,901.53 in priority taxes and \$7,053.60 general unsecured claim. Amended Proof of Claim No. 7. The Attachment to Proof of Claim No. 7 discloses that the taxes are for 2013, 2014, and 2016 tax years. Further, the opposition asserts that Debtor has not filed a tax return for 2016. This claim demonstrates that Debtor does have federal and state tax expenses from her income, even at the lower-earning rates in prior years than now stated under penalty of perjury going forward.

**Schedules, Assets, and Claims.** On Amended Schedule A/B, Debtor lists owning the real property identified as 7824 English Hills Road, Vacaville, California. Debtor states the Property has a value of \$550,000.00. Dckt. 108.

Debtor then lists the 7824 English Hills Road two more times on the Schedules, one time stating it has a value of \$56,191.68 and then \$0.00. Dckt. 1 at 8–9. For personal property, Debtor has corrected her omissions to state under penalty of perjury that she has:

- A. One vehicle (a Toyota Land Cruiser),
- B. \$2,500.00 of furniture,
- C. \$2,000.00 of electronics,
- D. \$500.00 of pictures and books,
- E. \$350.00 for an antique poodle collection,

- F. \$80.00 of exercise equipment,
- G. \$250.00 of clothing,
- H. \$800.00 of jewelry,
- I. \$20.00 of cash on hand, and
- J. \$1,000.00 in a Wells Fargo checking account.

Amended Schedule A/B, Dckt. 108.

After the February 21, 2018 hearing, the court reviewed the schedules again and concluded that Debtor may have \$1,610.00 per month to pay taxes and fund plan payments of \$2,040.00. The court noted that two motions to value have been granted in this case, and any dismissal of the case would result in those motions having to be relitigated in any future case.

Debtor's counsel has affirmatively prosecuted the case and plan, built around Debtor not having to pay any state or federal taxes. These acts have all been subject to counsel's certifications under Federal Rule of Bankruptcy Procedure 9011.

### **Review of Amended Plan**

On March 23, 2018, Debtor filed her Third Amended Chapter 13 Plan in this case. Dckt. 123. The proposed plan requires total payments of \$4,400 through December 2017 (averaging \$880 per month for the first five months of the Plan), then \$2,040.00 per month for the next three months (January through March 2018), and then \$3,500 per month for the remaining fifty-two months.

For the Class 1 "HSBC/Wells Fargo" secured claim with \$256,806.77 in pre-petition arrearages and \$28,405.20 in post-petition arrearages, Debtor proposes to make a \$517.00 per month arrearage cure payment for the post-petition arrearage, no current post-petition mortgage payment, and a \$2,258.32 adequate protection payment while Debtor diligently pursues a loan modification with Wells Fargo Bank, N.A. Plan Additional Provisions 6.05–6.07, Dckt. 123.

For Class 2 Claims, Debtor proposes \$0.00 payments on the claims secured by the second and third deeds of trust recorded against the English Hills Road Property.

No payments are provided for any other creditors, with the creditors holding general unsecured claims to receive a 0.00% dividend. *Id.*

HSBC Bank USA, NA, as Trustee filed an opposition to the Motion to Confirm the proposed Third Amended Plan. In the court's Civil Minutes, the proposed treatment and opposition are addressed. Dckt. 143. Unfortunately, HSBC Bank USA, NA, Trustee, did not address whether the proposed payment was reasonable as an adequate protection payment as allowed by Congress pursuant to 11 U.S.C. § 361, but essentially argued that § 361 did not exist.

As noted in the Civil Minutes, Debtor too failed in many ways, the court stating:

“While the Third Amended Plan could be confirmable, Debtor’s demonstrated lack of credibility in providing a "testimony on demand" declaration warrants denial of the Motion. The court presumes that the testimony under penalty of perjury, provided in the cool calm outside of court, prepared by Debtor’s experienced counsel, is the best that can be done. Debtor’s best consists of her legal conclusions, parroting Bankruptcy Code provisions, and imposing on the court Debtor’s personal "findings of fact." Debtor’s counsel is well aware of the Federal Rules of Evidence, of what constitutes admissible and credible testimony, and that the court does not treat federal court proceedings as a "free-for-all so long as one can get away with it" to abuse the federal judicial process.”

*Id.* at 3. Notwithstanding such concerns over the truthfulness of Debtor and the apparent lack of good faith prosecution of this case by Debtor and Counsel, the judge hearing the calendar that day continued the hearing on the Motion to Confirm.

The hearing on the Motion to Confirm was continued to June 26, 2018, to allow Debtor to file supplemental documents concerning the loan modification.

While cause exists to dismiss this Chapter 13 case, the court has continued a pending motion to confirm a plan to June 26, 2018. Ruling on this Motion to Dismiss would be inconsistent with continuing the confirmation hearing. With that in mind, the court continues the hearing on this Motion to 10:00 a.m. on July 11, 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 3:00 p.m. on June 26, 2018, specially set to be heard in conjunction with the continued hearing on the Motion to Confirm Debtor’s proposed Third Amended Plan.



36.

[18-20003](#)-E-13  
DPC-2

JAMES ZAMMIELLO  
Hank Walth

MOTION TO DISMISS CASE  
5-2-18 [49]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 22, 2018, Dckt. 59; 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 reply filed by James Zammiello (“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. 59, 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 May 30, 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 March 14, 2018. By the court’s calculation, 77 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 Sandra Randall (“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 \$199.00 delinquent in plan payments, which represents one month of the \$199.00 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.

38. [18-20405-E-13](#)      **JUNELLE PALEC**      **AMENDED MOTION TO DISMISS CASE**  
DPC-1                      Gary Fraley                      5-3-18 [29]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 22, 2018, Dckt. 40; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Junelle Palec (“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. 40, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

39.

[17-27906-E-13](#)  
DPC-1

PAMELA SPRING  
Mohammad Mokarram

MOTION TO DISMISS CASE  
4-12-18 [26]

**Final Ruling:** No appearance at the May 30, 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 May 22, 2018, Dckt. 32; 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 reply filed by Pamela Spring (“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. 32, 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.

40.

[17-24407](#)-E-13  
DPC-4

PATRICK/MARGUERITE  
SEEHUETTER  
Robert Huckaby

MOTION TO DISMISS CASE  
4-26-18 [82]

**Final Ruling:** No appearance at the May 30, 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 May 21, 2018, 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 Patrick Seehuetter and Marguerite Seehuetter (“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.

41. [18-20607-E-7](#)      MELISSA FAUS      MOTION TO DISMISS CASE  
DPC-2      Richard Jare      3-27-18 [39]

**Final Ruling:** No appearance at the May 30, 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.**

42. [18-20607-E-7](#)      MELISSA FAUS      ORDER TO SHOW CAUSE - FAILURE  
Richard Jare      TO PAY FEES  
3-9-18 [33]

**Final Ruling:** No appearance at the May 30, 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 March 11, 2018. The court computes that 80 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 March 5, 2018.

**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.

43. [18-20607-E-7](#) MELISSA FAUS  
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-10-18 [43]**

**Final Ruling:** No appearance at the May 30, 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 April 12, 2018. The court computes that 48 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 April 3, 2018.

**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.

44. [18-20607-E-7](#) MELISSA FAUS  
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-8-18 [49]**

**Final Ruling:** No appearance at the May 30, 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 May 10, 2018. 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 May 3, 2018.

**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.

45.

[17-25909-E-13](#)  
DPC-2

LYUDMILA POKATILOV  
Harry Roth

CONTINUED MOTION TO DISMISS  
CASE  
12-7-17 [32]

**Final Ruling:** No appearance at the February 21, 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, 76 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 Lyudmila Pokatilov (“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.

#### **FEBRUARY 21, 2018 HEARING**

At the hearing, Debtor’s counsel appeared and explained some of the reasons for the delay in proposing a new plan. The Chapter 13 Trustee concurred in Debtor’s request to continue the hearing. Dckt. 40. The court continued the hearing to 10:00 a.m. on May 30, 2018. Dckt. 41.

#### **RULING**

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.

46. [18-21311](#)-E-13      **CHARLES BENSON AND**      **MOTION TO DISMISS CASE**  
DPC-1                      **CHRISTINE WESLEY BENSON**      **5-14-18 [41]**  
                                    **Michael Hays**

**Final Ruling:** No appearance at the May 30, 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.**

47. [18-20115](#)-E-13      **DOUGLAS SCOTT**      **MOTION TO DISMISS CASE**  
DPC-2                      **Robert Huckaby**      **5-2-18 [39]**

**Final Ruling:** No appearance at the May 30, 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 May 22, 2018, Dckt. 51; 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 Douglas Scott (“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. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

48. [18-20415](#)-E-13      **KARINA HANGARTNER**      **MOTION TO DISMISS CASE**  
DPC-2                      **Diana Cavanugh**                      **4-19-18 [27]**

**Final Ruling:** No appearance at the May 30, 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.**

49. [16-28316](#)-E-13      **SHARRY STEVENS-GOREE**      **MOTION TO DISMISS CASE**  
DPC-4                      **Gary Fraley**                      **5-1-18 [124]**

**Final Ruling:** No appearance at the May 30, 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 May 30, 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 May 3, 2018, Dckt. 39; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Christopher Gray (“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. 39, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

51. [16-20219-E-13](#)  
DPC-3

MAUREEN CLINE  
Scott Hughes

MOTION TO DISMISS CASE  
4-27-18 [58]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 17, 2018, Dckt. 64; 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 Maureen Cline (“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. 64, 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 May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 27, 2018. 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 Anthony Aitken and Amalia Aitken (“Debtor”) are \$13,976.10 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).

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.

53. [18-20119-E-13](#) **CHERESE CAMACHO**  
**Richard Jare**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
3-15-18 [27]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on March 17, 2018. 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: \$76.00 due on March 12, 2018.

**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 May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 denied without prejudice as moot.**

David Cusick (“the Chapter 13 Trustee”) seeks to dismiss William Thomas, Jr., and Faye Thomas’s (“Debtor”) Chapter 13 case. Debtor filed a Notice of Conversion on May 24, 2018, however, converting the case to a proceeding under Chapter 7. Dckt. 135. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor’s case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on May 24, 2018. *McFadden*, 37 B.R. at 521.

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 case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Megan Carr (“Debtor”) is \$1,560.00 delinquent in plan payments, which represents multiple months of the \$390.00 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 May 22, 2018. Dckts. 29, 31. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 29, 32. 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 May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 18, 2018. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

**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 Katherine Brown (“Debtor”) is \$1,240.00 delinquent in plan payments, which represents less than one month of the \$2,048.57 plan payment. Before the hearing, two additional 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 is in material default under the Plan because the Plan exceeds sixty months due to the unsecured claims being approximately \$8,000.00 higher than the estimated amount. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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.

58. [18-20237-E-13](#)      **BRANDI KEITH**      **MOTION TO DISMISS CASE**  
DPC-1                      **Bruce Dwigginis**                      **5-1-18 [22]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 Brandi Keith (“Debtor”) did not commence making plan payments and is \$12,285.00 delinquent in plan payments, which represents multiple months of the \$4,095.00 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:



60. [17-27640-E-13](#)      **ROBERT RODNI**      **MOTION TO DISMISS CASE**  
DPC-1                      **Mark Wolff**                      **5-1-18 [18]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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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.**

61. [18-20340-E-13](#)      **ROBERT ELLIOTT**      **MOTION TO DISMISS CASE**  
DPC-2                      **Diana Cavanaugh**                      **4-12-18 [32]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 12, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

**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 Robert Elliot (“Debtor”) is \$3,103.04 delinquent in plan payments, which represents less than one month of the \$3,301.39 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 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 April 3, 2018. 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.

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 Kacee Perez (“Debtor”) is \$4,295.01 delinquent in plan payments, which represents multiple months of the \$1,447.81 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.

63.

[18-20143-E-13](#)  
DPC-2

LAURO/DANELLE AVILA  
Steele Lanphier

MOTION TO DISMISS CASE  
4-25-18 [\[24\]](#)

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 25, 2018. By the court’s calculation, 35 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”) argues that Lauro Avila and Danelle Avila (“Debtor”) did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on March 27, 2018. 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).

#### **FILING OF AMENDED PLAN**

Debtor filed an Amended Plan and Motion to Confirm on May 18, 2018. Dckts. 39, 42. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 41, 42. 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.

64. [17-27247](#)-E-13      **JOSE AGUIAR**      **MOTION TO DISMISS CASE**  
DPC-2                      **Eric Gravel**                      **4-26-18 [40]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
-----

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

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 May 15, 2018, Dckt. 53; 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 Jose Aguiar (“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 to Dismiss itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 53, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Trustee’s Motion to Dismiss is dismissed without prejudice.

65. [18-21247](#)-E-13 CHARLES HERNANDEZ  
Steele Lanphier

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
4-9-18 [25]**

**Final Ruling:** No appearance at the May 30, 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 April 11, 2018. 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: \$79.00 due on April 4, 2018.

**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.

66. [17-28248](#)-E-13      **SHAUN TAYLOR**  
                                         **Thomas Amberg**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**3-26-18 [19]**

**Final Ruling:** No appearance at the May 30, 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 March 28, 2018. 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 March 21, 2018.

**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.

67. [16-27049-E-13](#)      **RAYMOND/MELODY SMITH**      **MOTION TO DISMISS CASE**  
DPC-1                      Kyle Shumacher                      4-18-18 [34]

**Final Ruling:** No appearance at the May 30, 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 May 24, 2018, Dckt. 45; 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 Raymond Smith and Melody Smith (“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. 45, 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 May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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”) alleges that Anthony Salcedo (“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 \$12,539.04 delinquent in plan payments, which represents multiple months of the \$6,269.52 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 April 25, 2018. A review of the docket shows that Debtor has not yet filed an amended 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.

69. [18-20453](#)-E-13      **LLOYD/CLARITA EDWARDS**      **MOTION TO DISMISS CASE**  
DPC-2                      **Marc Carpenter**                      **4-25-18 [37]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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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.**

70. [16-28154](#)-E-13      **KEVIN BRIDGES**                      **MOTION TO DISMISS CASE**  
DPC-2                      **Mark Wolff**                              **5-1-18 [39]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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**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 May 24, 2018, Dckt. 46; 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 Kevin 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 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.

72. [17-27958](#)-E-13      **CHRISTOPHER/CHAUNDRA**      **MOTION TO DISMISS CASE**  
DPC-2                      **HEFFERNAN**                      **3-27-18 [31]**  
                                    **Stephen Murphy**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, the Trustee requesting that this Motion be dismissed (Dckt. 40), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

73. [13-32861](#)-E-13      **JAMES/BETH FRY**                      **MOTION TO DISMISS CASE**  
DPC-1                      **Peter Macaluso**                      **5-2-18 [184]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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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.**

74.

[13-32465](#)-E-13  
DPC-5

JUSTIN/AMBER GAMAYO  
Mark Wolff

MOTION TO DISMISS CASE  
4-27-18 [72]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 22, 2018, Dckt.78; 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 Justin Gamayo, Jr., and Amber Gamayo (“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. 78, 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.

75. [14-30866-E-13](#)  
DPC-1

DENISE YAPP  
Mark Shmorgon

MOTION TO DISMISS CASE  
5-1-18 [29]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 23, 2018, Dckt.52; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Denise Yapp (“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. 52, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

76.

[17-27966-E-13](#)  
DPC-2

CATHERINE COOK  
Michael Noble

MOTION TO DISMISS CASE  
5-1-18 [27]

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Catherine Cook (“Debtor”) is \$6,348.12 delinquent in plan payments, which represents multiple months of the \$2,037.03 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 May 10, 2018. Dckt. 31, 35. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 31, 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.

77. [15-21068](#)-E-13      **KENNETH/SUZANNE GALPIN**      **MOTION TO DISMISS CASE**  
DPC-1                      **Mikalah Liviakis**                      **5-2-18 [28]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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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.**

78. [16-27968](#)-E-13      **RICHARD/CATHY BURNETT**      **MOTION TO DISMISS CASE**  
DPC-1                      **Dale Orthner**                      **4-27-18 [35]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 27, 2018. 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 Richard Burnett and Cathy Burnett (“Debtor”) are \$10,806.00 delinquent in plan payments, which represents multiple

months of the \$2,165.00 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.

79. [14-27971-E-13](#)      **KENDALL/CYNTHIA BERTRAND**      **MOTION TO DISMISS CASE**  
DPC-2                      **Aubrey Jacobsen**                                      **4-27-18 [81]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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**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 May 18, 2018. Dckt. 89; 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 Kendall Bertrand and Cynthia Bertrand (“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. 89, 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.

80. [17-27271-E-13](#)      **ELIAS BONILLA**      **MOTION TO DISMISS CASE**  
DPC-1                      **John Sargetis**                      **4-19-18 [48]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 19, 2018. 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 Elias Bonilla ("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 January 23, 2018. 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.

81. [17-20683-E-13](#)      **RONDELL DANIEL**      **MOTION TO DISMISS CASE**  
DPC-1      **Mohammad Mokarram**      **4-27-18 [19]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 27, 2018. 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 Rondell Daniel, Sr. (“Debtor”) is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$350.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

82. [18-20883-E-13](#)      **MELODY SIMPSON**      **MOTION TO DISMISS CASE**  
DPC-2                      Steven Shumway                      4-25-18 [\[26\]](#)

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 25, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) alleges that Melody Simpson (“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 \$1,785.00 delinquent in plan payments, which represents one month of the 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.

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) asserts that Lessie McMiller, Jr., (“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 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)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). 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).

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.

84. [18-20684](#)-E-13      **JERIMIAH CANNADAY**      **MOTION TO DISMISS CASE**  
DPC-2                      **Steven Shumway**                      **3-29-18 [31]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 29, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Jerimiah Cannaday (“Debtor”) is \$6,890.00 delinquent in plan payments, which represents one month of the \$6,890.00 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. A review of the docket shows that Debtor and counsel appeared at the Continued Meeting of Creditors on April 19, 2018.

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)(i); 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); FED. R. BANKR. P. 4002(b)(2)(A). 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.

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on April 12, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Meegan Williamson (“Debtor”) did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on March 6, 2018. 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.

86. [18-20489](#)-E-13      **DAVID SWEENEY AND STACY ADER-SWEENEY**      **ORDER TO SHOW CAUSE - FAILURE TO PAY FEES**  
**August Bullock**      **5-7-18 [24]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 9, 2018. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 1, 2018.

**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 May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. 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 Marian Pena and Maria Pena (“Debtor”) are \$4,320.00 delinquent in plan payments, which represents multiple months of the \$1,080.00 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.

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on May 1, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Errol Mercado and Alita Mercado (“Debtor”) are \$2,376.00 delinquent in plan payments, which represents multiple months of the \$675.00 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 May 18, 2018. Dckt. 151, 152. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 151, 155. 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.

89. [17-22395](#)-E-13      **JEFFERY ROBERSON**      **MOTION TO DISMISS CASE**  
DPC-1                      **Mary Ellen Terranella**                      **5-1-18 [18]**

**Final Ruling:** No appearance at the May 30, 2018 hearing is required.  
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**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 May 23, 2018, Dckt. 31; 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 Jeffery Roberson (“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. 31, 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.