

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 10, 2018 at 10:00 a.m.

1.	<u>16-27300-E-13</u> <u>DPC-3</u>	LEO AUGUST Mark Wolff	CONTINUED MOTION TO DISMISS CASE 8-8-18 [43]
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Tentative Ruling: The Motion Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 5, 2018. By the court's calculation, 31 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 Leo August ("Debtor") is \$5,600.00 delinquent in plan payments, which represents two months of the \$2,800.00 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 argues that Debtor is in material default under the Plan because of his delinquency of payments. Section 1.01 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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 47. Debtor's counsel states within the Opposition that Debtor has cured the delinquency by making two payments of \$2,800.00. Debtor's counsel indicates further that Debtor missed payments due to an issue with his bank account, and in reliance on statements of the Trustee's office.

Debtor filed a supporting Declaration explaining that \$700.00 was withdrawn from his bank account by someone (presumably without permission). Dckt. 48, ¶ 3. Debtor also states when he contacted the Trustee's office they informed him he was current on payments, causing him to put funds towards plumbing and medical expenses. *Id.*, ¶ 4. Debtor states further that he will make two payments immediately to become current under the Plan. *Id.*, ¶ 6.

The court notes that Debtor's Declaration is unsigned, and therefore is not evidence upon which this court can rely. *Id.*, 2:19.5.

In the Declaration document Debtor does not provide the court with when the alleged contact with the Chapter 13 office occurred.

Debtor provides as Exhibit 1, a receipt demonstrating payment to the Trustee on August 10 and 21, 2018, in the amount of \$2,807.99 each. Exhibit 1, Dckt. 49. However, Debtor has made no attempt to authenticate this Exhibit, offering it as evidence for this court to rely on. Debtor's Declaration document does not make reference to what is shown in Exhibit 1. Dckt. 48. Moreover, as stated, the Declaration is not signed. *Id.*

Debtor does not attempt to explain to the court how he had \$5,600.00 to make the two alleged payments in August 2018. Under the confirmed Chapter 13 Plan in this case Debtor is required to make monthly plan payments of \$2,800.00 each. Order confirming Plan, Dckt Dckt. 22. For distributions under the Plan, Debtor has \$1,624.54 a month in payments for the secured claim on his residence. *Id.* ¶ 2.08. Then payment of \$3,500.00 to Debtor's attorney and \$9,600 in Chapter 13 Trustee fees. However, Debtor had on projected disposable income to provide more than a 0.00% dividend for creditors with general unsecured claims. *Id.* ¶ 2.15.

The court has relied on the financial information provided under penalty of perjury on Amended Schedules I and J in the confirmation of Debtor's Plan. Dckts. 20, 31. In this information Debtor reports having monthly net income of \$4,747 a month, necessary expenses of (\$1,954.27) and monthly net income of \$2,803 a month. There does not appear to be a source of disclosed monies from which a \$5,600 lump sum payment could be made to cure the multiple defaults.

SEPTEMBER 5, 2018 HEARING

At the September 5, 2018, hearing the court granted a continuance to allow Debtor and Debtor's counsel a final opportunity to address the above issues. Dckt. 51.

RULING

Debtor has not filed supplemental pleadings since the prior hearing.

Debtor is delinquent two Plan payments and has not provided any credible explanation for the failure to stay current under his Plan. Debtor has not provide any information as to why or how he could have "extra" monies to make such a substantial extra payments under a Plan for which there are not such funds to make any distribution to creditors holding general unsecured claims.

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.

2. [16-24802-E-13](#) **KEVIN/BRANDEE MCCANN** **MOTION TO DISMISS CASE**
[DPC-4](#) **David Foyil** **9-12-18 [85]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, and Office of the United States Trustee on September 12, 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 denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kevin and Brandee McCann (“Debtor”) are \$2,000.00 delinquent in plan payments, which represents several months of the \$760.00 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).

DEBTORS’ ORIGINAL AND AMENDED OPPOSITIONS

Debtor filed an Opposition and Amended Opposition to Trustee’s Motion on September 26, 2018. Dckts. 89, 92. Debtor’s Oppositions state Debtor became delinquent under the Plan because Debtor forgot the payment was set to increase. Debtor states further that it cannot cure the delinquency, and that therefore a modified plan will be filed on or before October 2, 2018 (corrected by the Amended Opposition, with the original Opposition stating a plan would be filed September 26, 2018).

Debtor’s Oppositions are supported by the Declaration of Hannah Hooker, an employee at the firm of Debtor’s counsel. Dckts. 90, 94. The Hooker Declaration states under penalty of perjury states Hooker was on vacation during the filing of the Motion to Dismiss and has been unable to file a modified plan (presumably meaning filed before the this Motion). Hooker states further that the modified plan is almost ready to be signed and filed, and is planned to be filed on or before September 2, 2018 (the court finds this date to be a scrivener’s error and that the referenced date was meant to be October 2, 2018 as the Amended Petition states; the Oppositions were not filed until September 26, 2018, well after the September

2, 2018 date). Hooker explains that the attorney of record for Debtor has been short-staffed due to two week leave of a key employee as a result of a murder-suicide in that employee's family.

FILING OF MODIFIED PLAN

Debtor filed a First Modified Plan and Motion to Confirm on October 2, 2018. Dckt. 98. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 95. 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.

3. [15-20204-E-13](#) **TIMOTHY/JENNIFER VINCENT** **MOTION TO DISMISS CASE**
[DPC-6](#) **Justin Kuney** **9-12-18 [74]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, and Office of the United States Trustee on September 12, 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 Timothy and Jennifer Vincent (“Debtor”) are \$5,638.57 delinquent in plan payments, which represents multiple months of the \$2,939.00 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 September 26, 2018. Dckt. 78. Debtor promises to cure the delinquency, or in the alternative, file a modified plan by the date of this hearing on the Motion.

Debtor’s Opposition is supported by the Declaration of Debtor filed concurrently. Dckt. 79. Debtor states within the Declaration emergency expenses, including substantial costs for removal of two large trees that had died and become a hazard, caused Debtor to become delinquent. Dckt. 79. Debtor includes in the Declaration a prayer that the court will not dismiss the case and allow Debtor to present evidence establishing that Debtor is current on Plan payments.

RULING

A review of the docket shows no modified plan has been filed. Furthermore, a mere promise to cure delinquency does not extinguish Trustee’s grounds for dismissal. 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.

4. [18-25114-E-13](#) **DAVID HOWERTON**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-19-18 [17]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on September 21, 2018. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 14, 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.

5. [17-20921-E-13](#) **STEFFANIE FLYNN-ADAMS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Tamie Cummins** **9-10-18 [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.

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 September 10, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Steffanie Flynn-Adams (“Debtor”) is \$202.00 delinquent in plan payments, which represents a single month of the \$202.00 plan payment. Before the hearing, another plan payment will have become 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 Debtor has failed to provide for the priority claim held by California Physician’s Services dba Blue Shield of California for \$3,069.80. Section 2.13 of the Plan makes that failure a breach of the Plan. Failure to provide for that claim puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on September 26, 2018. Dckt. 31. Debtor promises to file a modified plan on or before October 5, 2018.

RULING

Debtor is delinquent in plan payments and in breach of the Plan terms. No Modified Plan and Motion to Confirm have been filed. Cause presently 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. [18-24231-E-7](#) **DAVID SNEED** **ORDER TO SHOW CAUSE - FAILURE**
George Burke **TO PAY FEES**
9-10-18 [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. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 12, 2018. The court computes that 28 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on September 4, 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.

7. [18-24231](#)-E-7 **DAVID SNEED** **MOTION TO DISMISS CASE**
[DPC-2](#) **George Burke** **8-21-18 [23]**

Final Ruling: No appearance at the October 10, 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.**

8. [17-22333](#)-E-13 **THOMAS WARREN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Lucas Garcia** **9-10-18 [40]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 10, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Thomas Warren (“Debtor”) is \$671.00 delinquent in plan payments, which represents slightly more than one month of the \$650.00 plan payment. Before the hearing, another plan payment will have become 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 further that Debtor is in material default under the Plan. Approximately \$14,185.00 remains to be paid under the confirmed plan (excluding future monthly contract installment amounts), which would require 70 months of the \$205.00 payment (net of Trustee fees and monthly contract installments). Debtor will complete the Plan in 86 months, not the 60 months proposed. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to resolve these issues puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on September 26, 2018. Dckt. 44. In Debtor's Opposition, Debtor's counsel asserts:

1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.
2. The debtors live-in Roommate who contributes all of her income to the household (her name is Lori Childe), lost her IHSS income in June and was unable to gain more income (from Disability) until early September.
 - a. Due to recuperating income payments sufficient to catch up will be submitted on or before this hearing.
3. Finally, the trustee raises the fact that their calculations project an over extension of the plan time frame. This calculation has not been confirmed by counsel and will also take reviewing of all claims in further detail to ensure that no objections to claim or portion of claim needs to be filed.

Debtor requests the court deny this motion if Debtor becomes current, and allow for at least three weeks for a modified Chapter 13 Plan.

Debtor's Opposition is supported by the Declaration of Lori Childe, Debtor's roommate. Dckt. 45. Childe states she lost her IHSS income for service rendered to Debtor, but has since been approved for disability. Childe states further that a payment, using her disability and Debtor's social security income) will be made on or about October 6, 2018, which will be sufficient to cure all arrears that will have accrued by that time.

RULING

Debtor is delinquent in Plan payments and must file (but has not) a modified plan to cure the current overextended 86 month payment term. Cause currently 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.

9. [17-27346](#)-E-13 **KENNETH TABOR** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Scott Shumaker** **9-12-18 [119]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 12, 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 denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kenneth Tabor (“Debtor”) is \$3,980.00 delinquent in plan payments, which represents two months of the \$1,990.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Motion on September 26, 2018. Dckt. 125. The Response states barely that Debtor acknowledges the delinquency and will either become current or file a modified plan by the date of the hearing on the Motion.

RULING

Debtor is delinquent in Plan payments and has not provided evidence explaining the delinquency.

Debtor filed a Modified Plan on October 5, 2018. A summary review of the Motion to Confirm (Dckt. 127) and Declaration in support (Dckt. 129) appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

Based on the amended plan having been filed and the Debtor appearing got be actively prosecuting the case, the court denies the Motion without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee 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.

10. [18-23947-E-13](#)
[DPC-1](#)

SOPHIA MCINTOSH
Pro Se

MOTION TO DISMISS CASE
9-12-18 [22]

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

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 September 12, 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 (*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 Sophia McIntosh ("Debtor") did not commence making plan payments and is \$600.00 delinquent in plan payments, which represents two months of the \$300.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee asserts further 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 did not present any opposition to the Motion.

RULING

Debtor has not commenced payments, or sought confirmation of her proposed plan. Debtor's failure to prosecute her bankruptcy gives cause 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. [18-24872-E-13](#) **KEITH/LAKEISHA STEWART** **ORDER TO SHOW CAUSE - FAILURE
Richard Kwun** **TO PAY FEES**
9-6-18 [37]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. 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 Debtors, Debtors’ Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on September 8, 2018. The court computes that 32 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 September 4, 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.

12. [14-27173-E-13](#) DANIEL/ANNETTE ADAM MOTION TO DISMISS CASE
[DPC-2](#) Mikalah Liviakis 9-12-18 [37]

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 Debtors, Debtors' Attorney, and Office of the United States Trustee on September 12, 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). 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 Daniel and Annette Adam (“Debtors”) are \$4,001.00 delinquent in plan payments, which represents slightly more than a single month of the \$3,295.00 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).

RULING

Debtor is delinquent under the Plan and has not presented any response or opposition to the Motion. The Motion is granted, and the case is dismissed.

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

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

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

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

13. [18-23177-E-13](#) MOHAMAD SALIM
[DPC-2](#) Pro Se

CONTINUED MOTION TO DISMISS
CASE
8-2-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 2, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has 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 Mohamad Salim ("Debtor") is \$3,080.00 delinquent in plan payments, which represents multiple months of the \$1,540.00 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 argues further 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 July 31, 2018. Dckt. 27. 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 OPPOSITION

Debtor filed an Opposition on August 21, 2018. Dckt. 35. Debtor objects generally and requests a continuance to allow him additional time to obtain counsel. Debtor also filed a notice that he was unable to attend the September 5, 2018 hearing. Dckt. 36.

SEPTEMBER 5, 2018 HEARING

At the September 5, 2018, hearing the court continued the hearing on the Motion to October 10, 2018, to allow for Debtor to appear. Dckt. 41.

RULING

Debtor has not filed any supplemental pleadings. Debtor is not proceeding under the terms of the proposed Plan, and has not filed an Amended Plan subsequent to Trustee's Objection to Confirmation being sustained. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

14. [18-24479-E-13](#)
[DPC-2](#)

VLADIMIR TISKIY
Pro Se

MOTION TO DISMISS CASE
9-5-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Office of the United States Trustee on September 5, 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.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed the present Motion to Dismiss stating the following grounds for dismissal:

1. Debtor failed to appear at the Meeting of Creditors held August 30, 2018. Trustee does not have sufficient information to determine if any plan would be suitable under 11 U.S.C. § 1325. The Meeting has been continued to October 18, 2018.
2. Debtor is delinquent \$125.00 in Plan payments to the Trustee to date and the next scheduled payment of \$125.00 is due on September 25, 2018. The case was filed July 18, 2018. The Plan § 1.01 calls for payment to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into her plan to date.

3. Debtor failed to provide Trustee with a tax transcript or copy of federal income tax return with attachments for the most recent prepetition tax year for which a return was required, or a written statement that no such documentation exists. This is required 7 days before the date set for the Meeting of Creditors.
4. Debtor failed to provide the Trustee business Documents including: Questionnaire, 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, and proof of license and insurance or a statement that no such documents exist. This is required 7 days before the date set for the Meeting of Creditors.
5. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms to the Trustee as required by LBR 3015-1(b)(6).
6. Debtor cannot make payments under the plan or comply with the plan:
 - a. Schedule J lists Debtor's net income as -\$2,430.00 where plan payments are proposed to be \$125.00.
 - b. Debtor lists claims of SPS and Rashmore in Class 1 of the Plan, but lists the arrearage dividends as \$0.00.
 - c. Debtor's Statement of Financial Affairs is incomplete. Debtor provided information to question #4 and no other information is provided.

DISCUSSION

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).

Debtor is delinquent at least \$125.00 in proposed plan payments. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not 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 Trustee with business documents including:

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

- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor 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 Trustee. Debtor has not provided these forms. Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has also failed to provide sufficient information on:

- A. Schedules I and J,
- B. Statement of Financial Affairs, and
- C. Chapter 13 Plan

Without Debtor submitting the required documents with complete and accurate information, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

For the aforementioned reasons, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

15. [18-20885-E-13](#) ANTHONY/WENDY GIANOLA CONTINUED MOTION TO DISMISS
[DPC-3](#) Peter Macaluso CASE
7-19-18 [42]

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

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Anthony Paul Gianola and Wendy Elaine (“Debtor”) unreasonably delayed and failed to file an amended plan. 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 an Opposition on August 22, 2018. Dckt. 49. Debtor’s counsel indicates Debtor will file an amended plan once Debtor’s tax returns have been completed and filed. No declaration or other evidence is provided to support these assertions.

SEPTEMBER 5, 2018 HEARING

As of the September 5, 2018, hearing date Debtor had not filed an Amended Plan. The court continued the hearing on the Motion to October 10, 2018, to allow Debtor for the filing of such an Amended Plan. Dckt. 51.

DISCUSSION

To date, Debtor has not filed an Amended Plan to cure the Chapter 13 Trustee’s objections. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

17. [16-25089-E-13](#) **MARK/JENNIFER GALISATUS** **MOTION TO DISMISS CASE**
[DPC-4](#) **Daniel Davis** **9-6-18 [80]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, the IRS, and the Office of the United States Trustee on September 6, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mark and Jennifer Galisatus (“Debtor”) are \$3,206.00 delinquent in plan payments, which represents slightly less than one month of the \$3,252.00 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).

Trustee also asserts Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months based on the IRS claim.

Debtor and the IRS entered into a stipulation (Dckt. 38) stating Debtor shall provide for and pay to the IRS \$37,674.00 of their priority claim at 0 percent interest. The stipulation provides the remaining balance of \$15,600.00 of the priority claim shall be held in abeyance pending completion of the Chapter 13 plan at which point the IRS may pursue the remainder of the claim against Debtor. No order has been entered on the stipulation.

Debtor’s Confirmed Plan (Dckt. 60), Section 1.02 states “the debtors will pay the under funded priority amount owed to the Department of Treasury by stipulation after the expiration of the 60 month plan period.” Trustee believes this section refers to additional payments into the plan and is not for items which should be in the additional provisions. Unless full payments towards the IRS’ \$37,674.00 Class 5 claim are not required, the Plan will exceed the maximum sixty months allowed under 11 U.S.C. § 1322(d).

DEBTOR’S OPPOSITION

Debtor filed an Opposition to Trustee’s Motion on September 25, 2018. Dckt. 84. Debtor’s Opposition indicates a payment of \$3,206.00 was made September 6, 2018. The Opposition also states Debtor intends to make the August 25, 2018, payment no later than October 9, 2018. Debtor failed to (or refused) to provide a declaration supporting these statements.

The Opposition states further that Debtor’s counsel does not understand the Trustee’s objection regarding the IRS claim. However, Debtor is open either to an Order from the court as to the stipulation (Dckt. 38) or to additional clarifying language within the plan.

RULING

Debtor is delinquent in payments.

With respect to the Internal Revenue Service claim treatment, Debtor asserts that the Internal Revenue Service has waived the requirement that its priority claim be paid in full during the term of the plan, being satisfied with treatment outside the Plan.

Though the Internal Revenue Service may so agree, no such agreement has been filed with this court. It is not the right of the Debtor to impose such terms on the Internal Revenue Service, but to document for the court that the Internal Revenue Service has agreed to waive such rights and consents to such ex-plan treatment on its secured claim.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

The Debtor being in default and the Plan not complying with the required treatment for priority claims, and no waiver of such right to be paid in full on its priority claim being filed, the Plan in its current state may be overextended and thereby a breach of the Plan terms. 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. [17-26590-E-13](#)
[DPC-4](#)

RICHARD HUETTNER
Kyle Shumachaer

MOTION TO DISMISS CASE
9-12-18 [56]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 12, 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 Richard Lester Huettner ("Debtor") is \$1,310.00 delinquent in plan payments, which represents multiple months of the \$225.00 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 September 26, 2018. Dckt. 60. In the Opposition, Debtor's counsel states he has attempted to contact Debtor on multiple occasions through various mediums with no success. Debtor's counsel states further he will continue to reach out to Debtor to verify whether the Plan is indeed feasible and possible.

RULING

Debtor is delinquent in Plan payments and has not provided an explanation for delinquency. 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.

19. [17-22292-E-13](#) **KRISTIN JOHANSON JACKSON** **MOTION TO DISMISS CASE**
[DPC-3](#) **Thomas Amberg** **9-12-18 [68]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 12, 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 Kristin Lee Johanson Jackson (“Debtor”) is \$770.00 delinquent in plan payments, which represents multiple months of the \$385.00 plan payment. Before the hearing, another plan payment will become 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 to Trustee’s Motion on September 17, 2018. Dckt. 73. Debtor states unanticipated expenses from her move from Yountville to Davis caused her to fall delinquent. Debtor

intends to bring the payments current by reducing discretionary expenditures and working potential additional hours.

PRIOR MOTIONS TO DISMISS

This is the Trustee's third motion to dismiss. Trustee filed its first motion on August 8, 2017, (Dckt. 36) and second on February 21, 2018. Dckt. 60. A review of both motions shows as sole grounds Debtor's recurring delinquency.

Debtor resolved the first motion by filing a Modified Plan. *See Ex Parte Motion to Dismiss*, Dckt. 48. Debtor resolved the second motion by becoming current on or before the date of the hearing on the motion. Order, Dckt. 67.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. While Debtor has explained that there were "unanticipated" expenses associated with a move causing Debtor to miss payments, Debtor has demonstrated a pattern of falling behind in payments, leaving the court uncertain whether Debtor's Plan is feasible. 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. [16-23496-E-13](#)
[DPC-5](#)

MICHELLE DORENKAMP
Kyle Schumacher

MOTION TO DISMISS CASE
9-12-18 [[107](#)]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 12, 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 Michelle Maria Dorenkamp ("Debtor") is \$1,850.00 delinquent in plan payments, which represents multiple months of the \$925.00 plan payment. Before the hearing, another plan payment will be due. Debtor will need to pay \$2,775.00 to bring the Plan current by the date of the hearing. 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 September 26, 2018. Dckt. 111. Debtor's Opposition states Debtor lost her job right before the July 25, 2018, payment was due, but has since found new employment. Debtor intends to cure the delinquency before the date of this hearing on the Motion.

Debtor has failed (or refused) to provide a declaration attesting to statements within the Opposition.

RULING

Debtor is delinquent in Plan payments and has not presented evidence to explain delinquency. 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. [16-20740-E-13](#)
[DPC-3](#)

EMMA MCZEEK-TANKO
Thomas Amberg

CONTINUED MOTION TO DISMISS
CASE
8-3-18 [\[115\]](#)

No Telephonic Appearance is Allowed for Debtor Emma McZeek-Tank

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 3, 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 ~~denied without prejudice.~~

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Emma McZeek-Tanko (“Debtor”) is \$300.00 delinquent in plan payments, which represents one month of the \$300.00 plan payment. Before the hearing, another plan payment will be due. 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 further that Debtor is in material default under the Modified Plan because Debtor is delinquent multiple months of payment. Section 2.01 and 7.01 of the Modified Plan (Dckt. 105) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on August 6, 2018. Dckt.119. Debtor's counsel does not oppose the Motion, but merely requests a hearing and for such other relief the court deems proper. Debtor's counsel asserts Debtor either plans to become current on payments or file a Modified Plan by this hearing.

SEPTEMBER 5, 2018, HEARING

At the September 5, 2018, hearing, the court continued the hearing on the Motion to October 10, 2018, allowing Debtor to further explain her failure to proceed under the terms of her Modified Plan. Dckt. 121. The court ordered Debtor to appear at the continued hearing date to insure that Debtor appreciates the significance of these proceedings. Order, Dckt. 122.

DEBTOR'S SUPPLEMENTAL RESPONSE

On September 12, 2018, Debtor filed a Supplemental Declaration of Debtor. Dckt. 123. Debtor addresses the court's question arising from the September 5, 2018, hearing about the source of funds proposed to be used to complete the Modified Plan in full far before the term period. Debtor states under penalty of perjury that she withdrew approximately \$3,000.00 from her retirement account in January 2018 without consulting her Attorney, subsequently making a \$3,400.00 payment to the Trustee to complete her Modified Plan.

Debtor explains her intent to pay her Plan off early stemmed from frustration in not being able to find a replacement vehicle. Debtor surrendered her Ford Escape under the terms of the original Confirmed Plan. Dckt. 7. Debtor filed two motions to incur debt for a replacement vehicle (Dckts. 72 and 82), both being denied on the basis of the loans' high-interest rates. Debtor asserts she has not been able to secure a more reasonable interest charge and has been forced to rent vehicles.

RULING

A review of Debtor's Schedules A/B shows two retirement plans: a pension with CALPERS and a 457 plan with the state of California. Schedules A/B, Dckt. 1. Debtor has claimed an exemption of the latter plan in the amount of \$4,000.00 pursuant to California Code of Civil Procedure 704.115(a)(1) and (2)(b). Schedule C, Dckt. 1. In the CALPERS Plan, Debtor claims an exemption of \$1.00. *Id.*

While it appears Debtor used exempt funds to complete her Modified Plan early, providing a 100 percent dividend to creditors, Debtor has not clarified which retirement funds she used. At the hearing, Debtor explained **XXXXXXXXXXXXXXXXXX**.

~~The Motion 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.~~

22. [16-26231-E-13](#) **KATHERINE BROWN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Christian Younger** **9-10-18 [39]**

Tentative Ruling: No appearance at the October 10, 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 September 10, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 \$7,282.85 delinquent in plan payments, which represents multiple months of the \$2,048.57 plan payment. Another payment will become due by the time of this hearing. 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 further that Debtor is in material default under the Plan because the Trustee’s calculations currently show that Debtor will complete the Plan in 72 months, not the 60 months proposed. Approximately \$43,600.00 remains to be paid under the Confirmed Plan, which would take 53 months of the \$832.01 payment (net of Trustee fees and monthly contract installments). Debtor has completed 23 months, which would make the term 76 months. Section 5.03 of the Plan makes failure to complete the plan in 60 months a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

The Trustee also asserts as grounds for dismissal Debtor’s failure to prosecute this case, noting that Debtor’s Motion to Vacate a prior dismissal (Dckt. 35) was granted contingent on Debtor promptly filing a modified plan.^{FN.1.}

FN.1. The civil minutes for the August 7, 2018 hearing on Debtor’s Motion to Vacate state “Therefore, in light of the foregoing, the Motion is granted, without prejudice to a renewed Motion to Dismiss if the Chapter 13 Plan is not promptly modified.” Dckt. 35. The actual Order granting the Motion does not contain the same contingent language. *See* Order, Dckt. 36.

RULING

The Trustee’s arguments are well-taken. Debtor is delinquent in Plan payments and cannot proceed under the terms of her overextended Plan. While the court’s prior Order did not explicitly require a modified plan be filed, clearly the case cannot proceed without one.

In noting the challenges facing the Debtor in this case, the court’s Civil Minutes from the August 7, 2018 hearing on the Motion to Vacate Order Dismissing the bankruptcy case include the following:

A review of the present Motion appears to demonstrate that Debtor does not have the requisite legal knowledge to prosecute a bankruptcy case in federal court. Such is not unusual for the real people who are parties to proceedings in federal court everyday. They have not had the legal education and training required to know the federal and local rules, or to understand how the judicial process functions. That’s why they have attorneys.^{FN.1.}

FN.1. As shown by Debtor’s cobbling together a California State Form, not providing any evidence, not setting the motion for hearing, and not providing grounds as required under Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024, merely vacating the dismissal appears to be a recipe for disaster for Debtor, if she is proceeding on her own.

Here, there has been a breakdown between the Debtor and her attorney. However, that does not form a basis, in and of itself, to vacate the dismissal and leave Debtor to flounder in the case. Rather, Debtor needs to seek out and obtain replacement counsel. Such counsel can advise the Debtor whether it is in her interests to try and vacate the dismissal, modify the plan, and proceed over the remaining term of this plan. Alternatively, counsel may determine that Debtor's rights and interests are maximized by the filing of a new case.

Debtor has not presented adequate grounds to convince the court that vacating dismissal of this current case is warranted. If Debtor believes that she can proceed with a confirmable plan in a Chapter 13 case, then she can file a new case and propose such a plan, most likely also with new counsel if she cannot reach her counsel in this case.

Civil Minutes, Dckt. 35. In the two months that have transpired since the August 7, 2018 hearing, Debtor has not obtained counsel to represent her in this case.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 29, 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). 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 XXXXXXXXXXXXXXXXXX.

David Cusick (“the Chapter 13 Trustee”) argues that Ofelia Madrigal (“Debtor”) is not entitled to Chapter 13 relief under 11 U.S.C §§ 101(30) and 109(e) as Debtor does not have a regular source of income to support the plan. *See* Schedule I, Dckt. 1. Debtor states she is unemployed, and is only receiving \$302.00 as family support payments. Debtor lists \$1,374.00 on line 11 of Schedule I as “Living expenses paid by live-in boyfriend,” and \$895.00 as “Plan payment to be paid by live-in boyfriend.” *Id.*

DEBTOR’S OPPOSITION

Debtor filed an Opposition to Trustee’s Motion on September 26, 2018. Dckt. 23. Debtor states that while she has no income, she has been in a relationship with her significant other for 10 years and they have one child, aged 2, together. Debtor states further she is a stay-at-home mother caring for her children while her significant other provides for the family.

In support of the Opposition, Debtor provides the Declaration of Sanford Perreira, Debtor’s significant other. Dckt. 24. The Declaration adds further to the Opposition that Perreira is employed by American Medical Response West and Del Puerto Health Care District. My gross monthly earnings are approximately \$6,200.00 from American Medical Response West and approximately \$7,100.00 from Del Puerto Health Care District, for a total of approximately \$13,300.00 per month.

RULING

Debtor has explained that her “live-in boyfriend” is actually a long-term partner of 10 years whom she is raising at least one child, aged 2, and likely more. This appears to relieve concerns over whether her income is stable and regular. 11 U.S.C. § 101(30).

However, new concerns are raised by the Opposition. Debtor’s Petition and Schedules do not list dependants, and provide very modest expenses. From what has now been represented, it appears Debtor and her significant other, along with their children, are living as a family and for purposes of this bankruptcy are merely choosing which expenses they want to assign to Debtor, with Debtor’s significant other providing a *de minimis* contribution (relative to his \$13,300.00 gross monthly income) to cover those expenses.

Additionally, the Chapter 13 Plan filed in this case makes little “bankruptcy economic expense” for a debtor who would purport in good faith to have no income. There are no Class 1 (secured), Class 2 (secured), Class 3 (surrender collateral), Class 5 (priority unsecured), Class 6 (special treatment unsecured) claims. There is one Class 4 Claim, a \$1,201.00 monthly mortgage payment being made outside the plan.

For Class 7 general unsecured claims, Debtor (who purports to have no income) states that she will pay a 100% dividend to such creditors holding \$44,220.26 in unsecured claims. Why Debtor, with no income, will enter into a five year Chapter 13 Plan, funded by another, is a mystery.

At the hearing, Debtor explained **XXXXXXXXXXXXXXXXXXXX**.

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 **XXXXXXXXXXXX**.

25. [18-22497](#)-E-13 **ROBERT MAC BRIDE**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-24-18 [[69](#)]

Final Ruling: No appearance at the October 10, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on September 26, 2018. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$31.00 due on September 14, 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 October 10, 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 September 12, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

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

The Chapter 13 Trustee, David Cusick (“Trustee”) argues that Maurice Marvin Burnett (“Debtor”) is \$13,122.48 delinquent in plan payments, which represents approximately two months of the \$6,602.81 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.

RULING

Debtor is delinquent in Plan payments and has not presented opposition to the present 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 The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27. 18-22301-E-13 **KATISHA BROWN** **ORDER TO SHOW CAUSE - FAILURE**
Candace Brooks **TO PAY FEES**
8-21-18 [43]
DEBTOR DISMISSED: 09/10/2018

Final Ruling: No appearance at the October 10, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on August 23, 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 filing and administrative fees prescribed by 28 U.S.C. § 1930.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on September 10, 2018 (Dckt. 48), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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 as moot, and no sanctions are ordered.

28. [17-22606](#)-E-13 CALVIN/TAWANA COOPER MOTION TO DISMISS CASE
[DPC-2](#) Ronald Holland 9-12-18 [[108](#)]

DEBTORS DISMISSED:
09/19/2018
WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 10, 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.**

29. [13-35315](#)-E-13 STUART/TAMMIE CLARK MOTION TO DISMISS CASE
[DPC-3](#) W. Steven Shumway 9-12-18 [[100](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 10, 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.**

30. [14-20519-E-13](#) STEVEN/DEBORAH MCCONNELL MOTION TO DISMISS CASE
[DPC-2](#) Peter Macaluso 9-12-18 [88]

Final Ruling: No appearance at the October 10, 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 October 2, 2018, Dckt. 98; 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 Steven and Deborah McConnell (“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. 98, 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.

31. [13-25320-E-13](#) **MANUEL/WINONA MACHADO** **MOTION TO DISMISS CASE**
[DPC-1](#) **Peter Macaluso** **9-12-18 [24]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 10, 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.**

32. [18-23521-E-13](#) **EDWARD PETTYPLACE** **ORDER TO SHOW CAUSE - FAILURE**
Steele Lanphier **TO PAY FEES**
9-10-18 [37]

Final Ruling: No appearance at the October 10, 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 September 12, 2018. The court computes that 28 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$73.00 due on September 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.

33. [18-23825-E-13](#) **DARLENE CHIAPUZIO-WONG** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **9-11-18 [43]**

DEBTOR DISMISSED:
09/10/2018
WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 10, 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.**

34. [18-25525-E-13](#) TRACY HASTINGS
Kyle Shumacher

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-18 [14]**

Final Ruling: No appearance at the October 10, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 24 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$310.00 due on August 31, 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.

35. [18-20929-E-13](#)
[DPC-2](#)

SHARON SUMPTER
Aubrey Jacobsen

MOTION TO DISMISS CASE
9-12-18 [55]

Final Ruling: No appearance at the October 10, 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 September 12, 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). 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 Sharon Sumpter (“Debtor”) is \$3,740.00 delinquent in plan payments, which represents two months of the \$1,870.00 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).

RULING

Debtor is delinquent under the terms of the 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.

36. [18-20143-E-13](#) LAURO/DANELLE AVILA MOTION TO DISMISS CASE
[DPC-3](#) Steele Lanphier 9-12-18 [78]

Final Ruling: No appearance at the October 10, 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 October 10, 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, Dckt. 108; 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 Name of Debtor (“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. 108, 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.

38. [18-24094](#)-E-13 **THOMAS MEADOWS**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-4-18 [48]

DEBTOR DISMISSED: 09/19/2018

Final Ruling: No appearance at the October 10, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

39. [18-22140](#)-E-13 **ESTELLA ACEVEDO**
[DPC-2](#) **Michael Hays**

MOTION TO DISMISS CASE
8-17-18 [54]

Final Ruling: No appearance at the October 2, 2018, hearing is required.

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

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

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

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

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

40. [18-23746-E-13](#) **JOSELITO/GINA SANTOS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Chad Johnson** **9-12-18 [17]**

Final Ruling: No appearance at the October 10, 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 Debtors, Debtors’ Attorney, and Office of the United States Trustee on September 12, 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). 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 Joselito and Gina Santos (“Debtors”) did not commence making plan payments and are \$6,482.94 delinquent in plan payments, which represents two months of the \$3,241.47 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.

Debtors did not present any opposition to the Motion.

RULING

Debtor has not made any payments under the proposed 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.

41. [17-28248-E-13](#) **SHAUN TAYLOR** **MOTION TO DISMISS CASE**
[DPC-1](#) **Thomas Amberg** **9-12-18 [25]**

Final Ruling: No appearance at the October 10, 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 October 4, 2018, Dckt. 38; 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 Shaun Amanda Taylor (“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. 38, 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.

42. [18-23759-E-13](#) **CHESTER CARTER** **MOTION TO DISMISS CASE**
[DPC-2](#) **9-11-18 [24]**

Final Ruling: No appearance at the October 10, 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 September 11, 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 Chester Carter (“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). Debtor has failed to appear at the Meeting of Creditors originally scheduled for August 2, 2018 and held again on September 6, 2018. The meeting was continued to October 18, 2018.

The Chapter 13 Trustee also argues that Debtor did not commence making plan payments and is \$3,347.38 delinquent in plan payments, which represents multiple months of the \$1,673.69 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.

RULING

Debtor has not appeared at the Meeting of Creditors and has not commenced plan payments. 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.

43. [15-23769-E-13](#)
[DPC-3](#)

COREY LEE COLEMAN
Peter Cianchetta

MOTION TO DISMISS CASE
9-12-18 [81]

Final Ruling: No appearance at the October 10, 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 September 12, 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). 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 Corey Coleman (“Debtor”) is \$2,448.76 delinquent in plan payments, which represents multiple months of the \$1,689.44 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).

Debtor has filed no response to the Motion.

RULING

Debtor is delinquent under the Plan and has not opposed this 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.

44.	<u>18-25569</u> -E-13	GRACE WOODRING Kyle Schumacher	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-14-18 <u>[16]</u>
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Final Ruling: No appearance at the October 10, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on September 16, 2018. The court computes that 24 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$310.00 due on August 31, 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. [18-25181](#)-E-13 **THOMAS MEADOWS**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-21-18 [38]

Final Ruling: No appearance at the October 10, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

46. [18-24173](#)-E-13 **FERRIC/STACY COLLONS**
 Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-6-18 [46]

Final Ruling: No appearance at the October 10, 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 September 8, 2018. The court computes that 32 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 September 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.

47. [17-26035-E-13](#) **RUSSELL/PATRICIA CARLSEN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Seth Hanson** **9-12-18 [26]**

Final Ruling: No appearance at the October 10, 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 October 3, 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 Russell Thornton Carlsen and Patricia Jean Carlsen (“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.

48. [18-20738-E-13](#) **TAUJAI CAREY** **MOTION TO DISMISS CASE**
[DPC-3](#) **Richard Jare** **9-12-18 [70]**

Final Ruling: No appearance at the October 10, 2018, hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed a an Ex Parte Motion to Dismiss the pending Motion on October 5, 2018, Dckt. 82; 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 Taujai Donae Carey (“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. 82, 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.

49. [15-28741-E-13](#) **PAMELA MCGAUGHY** **MOTION TO DISMISS CASE**
[DPC-2](#) **Thomas Amberg** **9-12-18 [64]**

Final Ruling: No appearance at the October 10, 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 October 5, 2018, Dckt. 79; 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 Pamela Lynn McGaughy (“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. 82, 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.