

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 14, 2018 at 10:00 a.m.

1. **18-24602-E-13** **PATRICIA KOKASON** **MOTION TO DISMISS CASE**
DPC-1 **Peter Cianchetta** **10-24-18 [29]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) files the instant Motion to Dismiss on the bases that:

- A. Patricia Kokason (“Debtor”) is \$155.48 delinquent in Plan payments, representing a partial payment of her \$1012.00 payments.

- B. Debtor has failed to file a Motion to Confirm Amended Plan for the Plan filed on July 24, 2018.

DISCUSSION

The Chapter 13 Trustee seeks dismissal of the case on the basis that Debtor is \$155.48 delinquent in plan payments, which represents a portion of one month of the \$1012.00 plan payment. Another payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee further asserts that Debtor did not file a Motion to Confirm a Plan following the filing of Debtor's Amended Plan on July 24, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proffered no opposition to this Motion.

RULING

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

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

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

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

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

2. [18-23505-E-13](#) **ANDREY/MARIYA**
[DPC-2](#) **SLOBODYANYUK**
 Eric Schwab

MOTION TO DISMISS CASE
10-24-18 [32]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) asserts Andrey and Mariya Slobodyanyuk (“Debtor”) have caused unreasonable delay that is prejudicial to creditors by failing to file an amended plan and setting it for confirmation.

DISCUSSION

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the Order sustaining Trustee’s Objection to Confirmation of Debtor’s prior plan on August 7, 2018. Order, Dckt. 31. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proffered no opposition to this Motion.

RULING

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

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

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

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

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

3. [17-24407-E-13](#) **PATRICK/MARGUERITE** **MOTION TO DISMISS CASE**
[DPC-5](#) **SEEHUETTER** **10-24-18 [106]**
 Robert Huckaby

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) asserts Patrick and Marguerite Seehuetter (“Debtor”) are causing unreasonable delay that is prejudicial to creditors because they have failed to file a Plan or Motion to Confirm a Plan subsequent to the court’s Order denying Debtor’s Motion to Confirm Amended Plan filed on August 7, 2018. Dckt. 105. The Trustee notes that Debtor has filed four plans since the filing on July 1, 2017, and, all those plans having been denied, that Debtor is incapable of filing a confirmable plan.

DISCUSSION

Debtor has not filed a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on August 7, 2018. Dckt. 105. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, a review of the docket shows that Debtor has yet to confirm a plan in this case filed July 1, 2017. At the hearings on the two most recent motions to confirm, the court discussed Debtor's failure to provide evidence demonstrating an ability to pay and Debtor's lack of credible testimony. Dckt. 79, 103. The case history suggests Debtor's case may not be suitable for Chapter 13.

Debtor has proffered no opposition to this Motion.

RULING

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

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

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

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

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

4. [18-25210-E-13](#) SEGUNDO ALMOGELA
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-24-18 [26]**

#4 AND 5

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and the Chapter 13 Trustee as stated on the Certificate of Service on October 26, 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: \$76.00 due on October 19, 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: \$76.00.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*), and Office of the United States Trustee on October 18, 2018. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) argues that this case be dismissed on the bases that:

- A. Segundo Almogela (“Debtor”) failed to appear at the First Meeting of Creditors held on September 20, 2018. The Meeting has been continued to October 25, 2018.
- B. Debtor has failed to propose and make payments, having proposed to make payments of \$0.00 and having paid \$0.00 to date.
- C. The IRS has filed Claim 1, indicating that Debtor has not filed returns during the 4-year period preceding the filing of his petition.
- D. Debtor has failed to provide the Trustee with 60 days of payment advices received prior to the filing of his petition.

- E. Debtor has failed to provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year or a written statement that no such documentation exists.

DISCUSSION

Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Reviewing the docket, the Trustee's October 26, 2018 Report states Debtor failed to appear at the continued Meeting 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 not commenced making plan payments and has paid nothing into his proposed Plan since filing his petition on August 20, 2018. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Proof of Claim, No. 1, filed by the IRS Indicates Debtor's 2015 tax return was never filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

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 also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). This constitutes yet another basis for unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not proffered any opposition to the Motion.

Proposed Plan in Current Case

The Chapter 13 Plan filed in this case provides for making \$0 in monthly plan payments for an unstated number of Months. Plan ¶¶ 2.01, 2.03; Dckt. 7. All Sections of the proposed Plan for payment of creditor claims are left blank in the proposed plan.

Correspondence From Debtor

On September 11, 2018, the court received correspondence from the Debtor. Dckt. 17. In the correspondence Debtor requests that the court continue his First Meeting of Creditors because of a conflicting doctor's appointment. The appointment relates to a serious health condition.

Debtor further states that he believes his lender has "done something very wrong," with his daughter having agreed to make post petition payments - his daughter having made three already. Debtor

further states the he believed his loan was current, but then “a week later [Lender] foreclosed on me.” *Id.* When Debtor’s daughter told the Chapter 13 Trustee’s paralegal of this asserted improper foreclosure, Debtor states that they were told that this was not something the Chapter 13 Trustee would address and that Debtor and Debtor’s daughter needed to contact the Lender directly. The Debtor then states, “UNBELIEVABLE, even if a Bankruptcy was filed I can not believe that the Federal Government has no control over a bank and allowing them to get away with this!” *Id.* This comment appears to manifest a misunderstanding of the duties of the Chapter 13 Debtor to assert such rights and the limited role of a Chapter 13 Trustee in a bankruptcy case (It also appears to manifest a misunderstanding that the Chapter 13 Trustee is part of the “Federal Government,” or that a federal agency or department is responsible for, or has the power to, assert rights of the Debtor).

Prior Bankruptcy Cases Filed by Debtor

A review of the court’s files disclose that the Debtor has filed and had two prior Chapter 13 bankruptcy cases dismissed since March 30, 2017 – Case 17-20022, Filed January 3, 2017, and Dismissed March 30, 2017; and Case 17-23993, Filed June 15, 2017, and Dismissed September 9, 2017.

The court’s findings in dismissing Case No. 17-23993 include identifying that one of the dismissal grounds asserted by the Trustee was that Debtor made no plan payments in that case. 17-23993, Dckt. 48.

RULING

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

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

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

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

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

6. [18-25412-E-13](#) **APRIL TURNBULL**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-2-18 [18]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on October 4, 2018. The court computes that 41 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 27, 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.

7. [18-25412-E-13](#) **APRIL TURNBULL**
[DPC-2](#) **Pro Se**

MOTION TO DISMISS CASE
10-17-18 [24]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 17, 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”) seeks dismissal of the case on the basis that:

- A. April Turnbull (“Debtor”) failed to appear at the First Meeting of Creditors held on October 11, 2018. The Meeting was continued to November 15, 2018.
- B. Debtor is delinquent \$340.00 in plan payments, and an additional payment of \$340.00 became due on October 25, 2018.
- C. Debtor has failed to provide the Trustee with income verification because she has not submitted her 60 days of Employment Payment Advices prior to filing as required.
- D. Debtor has failed to provide the Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the 2017 tax year, or a written statement that no such documentation exists.
- E. Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms required by the Trustee.

DISCUSSION

The Chapter 13 Trustee alleges that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Additionally, the Trustee asserts that Debtor is \$340.00 delinquent in plan payments, which represents one month of the \$340.00 plan payment. Another payment became due on October 25, 2018. Failure to make plan payments is also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That too is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Lastly, the Chapter 13 Trustee argues that Debtor has failed to provide the Class 1 Checklist and Authorization to Release Information forms. Local Bankruptcy Rule 3015-1(b)(6) requires Debtor to provide the Class 1 Checklist and Authorization to Release Information forms to the Chapter 13 Trustee. Debtor has not provided these forms. Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

8. [18-22716-E-13](#) **DOMINIC MIZZI**
[DPC-2](#) **Mary Ellen Terranella**

MOTION TO DISMISS CASE
9-21-18 [30]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 21, 2018. By the court's calculation, 54 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 this case on the basis that Dominic Mizzi ("Debtor") has failed to file an Amended Plan and Motion to Confirm a Plan since the Trustee's Objection to Confirmation of Debtor's proposed plan was sustained. Dckt. 29.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 31, 2018. Dckt. 34. The Opposition states Debtor is still preparing a profit/loss statement which a plan could then be based on. Debtor expects the Amended Plan to be filed before the date of the hearing on this Motion.

DISCUSSION

Debtor has not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 7, 2018. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Intent to file an amended plan is not evidence that resolves the Motion. Furthermore, Debtor has not provided a declaration stating an intent to file an Amended Plan under penalty of perjury.

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.

9.	18-25316-E-13	GARY DUBIE George Burke	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-29-18 [20]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on October 31, 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: \$77.00 due on October 23, 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 subjection 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.

10. [18-23227-E-13](#) **KIMBERLI HECK AND DAVID** **MOTION TO DISMISS CASE**
[DPC-1](#) **HECK, JR.** **10-17-18 [19]**
 Paul Bains

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 October 17, 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 on the basis that Kimberli and David Heck (“Debtor”) are delinquent \$16,919.08 in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition to Trustee’s Motion on October 31, 2018. Dckt. 23. Debtor’s Opposition and supporting Declaration state Debtor defaulted because of reduced work hours as a teacher. Dckt. 24. Debtor states further a modified plan will be filed before the date of the hearing on this Motion.

DISCUSSION

Debtor is \$16,919.08 delinquent in plan payments, which represents multiple months of the \$7,329.77 plan payment. Another payment became due on October 25, 2018, which would bring the delinquency to \$24,248.55 before the hearing on this Motion. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on November 8, 2018. Dckts, 26, 30. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 28. 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; *See* Declaration, Dckt. 29, ¶ 10.

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.

11.	17-22333-E-13 DPC-2	THOMAS WARREN Lucas Garcia	CONTINUED MOTION TO DISMISS CASE 9-10-18 [40]
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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.
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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.

OCTOBER 10, 2018 HEARING

At the October 10, 2018, hearing Debtor’s counsel reported that disagreement had broken out between Debtor and Ms. Childe, that her status as caregiver had been terminated, that she had not been paying rent, and that Debtor’s sister (Susan Rose) had obtained counsel and was asserting that she now held the power of attorney for Debtor.

Debtor’s counsel further reported that he now believed that Debtor’s ability to prosecute this case on his own was impaired.

The court issued an Order continuing the hearing to November 14, 2018 and ordering the following parties to appear in person at the continued hearing:

1. Susan Rose, identified as Debtor’s sister and current holder of a power of attorney;
2. Eric Jeppson, Esq., attorney for Ms. Rose;
3. Lori Childe, identified as Debtor’s former care giver, holder of power of attorney, and roommate; and
4. Thomas Warren, the Debtor

Order, Dckt. 47. To be determined at the continued hearing is who the actual real party in interest is for the Debtor—whether it is the Debtor or a person with a power of attorney who must be appointed as a personal representative pursuant to Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025, 9014, and 1004.1.

Additionally, the court ordered that any supplemental pleadings be filed on or before October 30, 2018. *Id.*

RULING

No supplemental filings have been made since the October 10, 2018 hearing on the Motion.

At the hearing ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

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

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

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

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

12. [18-25233](#)-E-13 CAROLYN LAWSON MOTION TO DISMISS CASE
[DPC-2](#) Pro Se 10-3-18 [25]

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

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 October 3, 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

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

- A. Carolyn Lawson (“Debtor”) failed to appear at the First Meeting of Creditors held on September 27, 2018. The Meeting was continued to November 29, 2018.
- B. Debtor has made no plan payments, and is currently delinquent \$123.00.
- C. Debtor has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return with attachments for the 2017 tax year.

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).

Further, Debtor is \$123.00 delinquent in plan payments, which represents one month of the \$123.00 plan payment. An additional payment became due on October 25, 2018. Debtor has not actually commenced payments in this case. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Lastly, 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 also unreasonable delay that is prejudicial to creditors and a third basis for dismissal. 11 U.S.C. § 1307(c)(1).

Debtor has not proffered any opposition to the Motion.

RULING

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

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

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

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

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

13. [18-21839-E-13](#)
[DPC-1](#)

FRANCISCA GARAY
Justin Kuney

MOTION TO DISMISS CASE
10-17-18 [31]

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 October 17, 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 Francisca Garay ("Debtor") is \$1,527.88 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on October 31, 2018. Dckt. 35. Debtor's Opposition states Debtor plans to present evidence that the default in plan payments has been cured or that a Modified Plan and Motion to Confirm has been filed.

DISCUSSION

Debtor is \$1,527.88 delinquent in plan payments, which represents multiple months of the \$787.98 plan payment. Another payment became due on October 25, 2018, bringing the total to cure the default to \$2,315.86. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

The Debtor is delinquent in payments and no modified plan has been filed. 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.	<u>18-23948</u> -E-13	CHERYL MCNEAL Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-25-18 [31]
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Final Ruling: No appearance at the November 14, 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 October 27, 2018. The court computes that 18 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on October 22, 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 subjection 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.

15. [18-25149](#)-E-13 **JOHN STAHLCKER** **ORDER TO SHOW CAUSE - FAILURE
Paul Bains** **TO PAY FEES**
10-22-18 [34](#)

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Service on October 24, 2018. The court computes that 21 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$76.00 due on October 15, 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: \$76.00.

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.

16. [18-23750-E-13](#)
[DPC-2](#)

LEE NEWTON
Joseph Sandbank

MOTION TO DISMISS CASE
10-24-18 [30]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 24, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Lee Ann Newton ("Debtor") is delinquent \$2,817.17 in plan payments and has not filed an amended plan and attending motion to confirm after the Objection to her previously filed Plan was sustained on August 28, 2018.

DISCUSSION

Debtor is \$2,817.17 delinquent in plan payments, which represents multiple months of the \$2,072.39 plan payment. Another payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, the court sustained the Trustee's Objection to Confirmation of Debtor's proposed plan on August 31, 2018. Dckt. Order, 29. A review of the docket shows that Debtor has not yet filed a new

plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That too is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proffered no opposition to the Motion.

RULING

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

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

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

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

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

17. [18-25851-E-13](#)
[DPC-2](#)

ROBERT HUNTER
Peter Macaluso

MOTION TO DISMISS CASE
10-30-18 [25]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Office of the United States Trustee on October 30, 2018. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is ~~XXXXXXXX~~, and the case is ~~XXXXXXXX~~.

David Cusick (the "Chapter 13 Trustee") seeks dismissal on the bases that:

- A. Robert Hunter ("Debtor") has failed to provide the Trustee with a tax transcript or copy of his Federal Income Tax Return with attachments for the 2017 tax year or a written statement that no such documentation exists.
- B. Debtor has failed to provide the Trustee employer payment advices for the 60 days preceding the filing of his petition.
- C. Debtor has made no plan payments and proposed no plan payments since this petition was filed on September 17, 2018.

OPPOSITION FILED BY DEBTOR

On November 9, 2018, Debtor's counsel filed an Opposition to the Motion. Dckt. 34. In addition to stating that counsel substituted in this case on October 30, 2018, he also states that he is in the process of gathering the required information for the prosecution of this case. The Opposition further states counsel and Debtor require additional time to amend the Schedules and assemble a plan.

A review of the court's files indicated that this is Debtor's first and only bankruptcy case filed in this District.

DISCUSSION

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 also not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That too is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, Debtor has not commenced making plan payments and has not proposed a plan payment to be made. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Substitution of Attorney

The court notes that a substitution of attorney was filed October 30, 2018 substituting wherein Debtor, previously Pro Se, substitutes Peter Macaluso as counsel. Dckt. 33.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

RULING

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is **xxxxxxx**, and the case is **xxxxxxxxx**.

18. [18-25752-E-13](#) **RICARDO CORTEZ** **MOTION TO DISMISS CASE**
[DPC-1](#) **Timothy Walsh** **10-30-18 [23]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 30, 2018. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

The hearing on the Motion to Dismiss is continued to January 9, 2018 at 10:00 a.m.

David Cusick (the “Chapter 13 Trustee”) seeks dismissal on the bases that:

- A. Ricardo Cortez (“Debtor”) failed to appear at the First Meeting of Creditors held on October 25, 2018. The Meeting was continued to November 15, 2018.
- B. Debtor is delinquent \$1,759.00, having paid \$0.00 into the Plan to date.

- C. Debtor has failed to provide the Trustee with a tax transcript or copy of his Federal Income Tax Return with attachments for the 2017 tax year or a written statement that no such documentation exists.
- D. Debtor's Plan filed on October 9, 2018 has not been served on all interested parties and there is no Motion to Confirm Plan pending.

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 did not commence making plan payments and is \$1,759.00 delinquent in plan payments, which represents one month of the \$1,759.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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 also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, the 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 too 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 November 5, 2018. Dckt. 27. Debtor's Opposition requests the court continue the hearing to allow Debtor opportunity to appear at the next Meeting of Creditors, cure the single delinquent payment, and properly notice the proposed plan. Debtor states further that no tax returns have been filed for 2017 because of Debtor's limited income.

Certificate of Service

Debtor filed a Proof of Service of Debtor's Chapter 13 Plan on November 5, 2018. Dckt. 29. The Debtor's counsel states in the Proof of Service under penalty of perjury that the Chapter 13 Plan was served on the Chapter 13 Trustee and the U.S. Trustee.

RULING

Debtor has now properly served the proposed plan. Debtor appearing to be actively prosecuting this case, the court shall continue the Motion to allow Debtor to cure delinquency in payment, appear at the

continued Meeting of Creditors, and provide to the Trustee any remaining documents. The hearing on the Motion is continued to January 9, 2018 at 10:00 a.m.

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

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

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

IT IS ORDERED that the hearing on the Motion is continued to January 9, 2018 at 10:00 a.m.

19. [16-28154-E-13](#) **KEVIN BRIDGES** **MOTION TO DISMISS CASE**
[DPC-4](#) **Mark Wolff** **10-17-18 [57]**

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 October 17, 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 on the basis that Kevin Bridges (“Debtor”) is delinquent \$1,000.00 in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on October 25, 2018. Dckt. 61. In his supporting declaration, Debtor asserts the reason for his delinquency was the cost he incurred retaining an attorney to defend against criminal charges filed against him. Dckt. 62. Debtor testifies that he made his regularly scheduled payment of \$500.00 on October 23, 2018 and intends to pay the delinquent \$1000.00 no later than November 17, 2018. *Id.*

DISCUSSION

Debtor is \$1,000.00 delinquent in plan payments, which represents two months of the \$500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors and the outstanding delinquency is sufficient cause for granting this Motion. 11 U.S.C. § 1307(c)(1).

RULING

Debtor is delinquent in plan payments. 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.

20. [17-25556-E-13](#) **RICKY GREEN**
[DPC-2](#) **Peter Macaluso**

MOTION TO DISMISS CASE
10-17-18 [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 October 17, 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 hearing on the Motion to Dismiss is continued to December 4, 2018, at 3:00 p.m. to be heard alongside the Objection to Claim.

David Cusick (the "Chapter 13 Trustee") seeks dismissal of the case on the basis that Ricky Green ("Debtor") is \$2,235.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on October 31, 2018. Dckt. 46. Debtor argues an objection to claim has been filed as to the sole remaining creditor in this case, Bank of America, N.A. Therefore, Debtor requests the hearing on this Motion be continued to be heard alongside the objection.

The Opposition requests this Motion be continued to trail the hearing on his Objection to Claim scheduled on December 4, 2018. Presumably, the pending Objection has cured its earlier defects.

DISCUSSION

A review of Debtor's Schedules shows Debtor lists only two creditors in this case: "Hunt and Henriques," identified as Bank of America and "Sill and Associates." The total of the latter claim is only \$1.00. Therefore, the sole claim remaining is the claim of Bank of America.

Debtor filed an Objection to Claim October 16, 2018, objecting to the claim of Bank of America. Dckt. 37. Debtor requests the court disallow Bank of America's claim generally or limit it to the amount already paid through the plan.

If Debtor's Motion is successful, the Chapter 13 Plan will be completed. Therefore, the hearing on the Motion to Dismiss is continued to December 4, 2018, at 3:00 p.m. to be heard alongside the Objection to Claim.

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

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

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

IT IS ORDERED that , the hearing on the Motion to Dismiss is continued to December 4, 2018, at 3:00 p.m. to be heard alongside the Objection to Claim

21. [18-22861-E-13](#) CALEB/EMILY HUMPHREY MOTION TO DISMISS CASE
[DPC-1](#) Lucas Garcia 10-17-18 [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.

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 October 17, 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 Caleb and Emily Humphrey (“Debtor”) are \$2,670.64 delinquent in plan payments.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on October 30, 2018. Dckt. 21. Debtor filed a supporting Declaration explaining Debtor’s delinquency is the result of car trouble, as Debtor incurred costs of repair and vehicle rental. Dckt. 22. Debtor states further that Co-Debtor recently obtained new employment with increased income. *Id.*

Debtor does not anticipate being able to cure the delinquency in payments and intends to file a modified plan.

DISCUSSION

Debtor is delinquent \$2,670.64, which represents multiple months of the \$1,342.66 plan payment. Another payment became due on October 25, 2018, thus bringing the total to cure to 4,013.30. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Debtor is delinquent in plan payments, and has not filed a modified plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

22. [13-29064-E-13](#) **TERRY/REBECA BRISTER** **MOTION TO DISMISS CASE**
[DPC-3](#) **Mary Ellen Terranella** **10-17-18 [125]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 17, 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 Terry and Rebeca Brister (“Debtor”) are \$4,977.00 delinquent in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on October 31, 2018. Dckt. 129. Debtor asserts a \$1,500.00 payment was made after the filing of this Motion. Debtor asserts further Debtor plans to make a payment of \$1,000.00 in November, and then to make payments of \$1,500.00 on the third Wednesday of each month, commencing in December 2018 and continuing until the remaining balance (asserted to be \$4,367.00) is paid in full.

The Opposition explains further Debtor has had significant health issues during the Chapter 13 Plan term, causing both Co-Debtors to retire, reducing income and making plan payments more difficult. Nevertheless, Debtor asserts the plan is close to completion.

DISCUSSION

From the evidence presented, Debtor is delinquent at least \$4,367.00, which represents multiple months of the \$890.00 plan payment. Debtor has explained both Co-Debtors have retired and income has been reduced (this being reflected in past motions to confirm amended and modified plans), but has not explained how Debtor will come up with the remaining funds to become cure the delinquency here. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

23. [17-24967](#)-E-13 **BARBARA GRAVES**
[DPC-2](#) **Gary Fraley**

CONTINUED MOTION TO DISMISS
CASE
6-13-18 [47]

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

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 June 13, 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 is granted and the case is ~~converted to one under Chapter 7~~ dismissed.

David Cusick (the “Chapter 13 Trustee”) argues that Barbara Graves (“Debtor”) is in material default under the Plan because Debtor has failed to turn over tax refunds from 2014 to 2016 totaling \$8,015.00. Section five of the Order Confirming the Plan makes that failure a breach of the Plan. Failure to provide those funds puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR’S RESPONSE

Debtor filed a Response on June 27, 2018. Dckt. 51. Debtor states that she completed her missing tax returns within one month of filing this case and has not received any tax returns to turn over to the Chapter 13 Trustee.

JULY 11, 2018, HEARING

At the July 11, 2018, Debtor and Debtor’s counsel both promised to diligently prosecute the recovery of the tax refunds and get the monies paid into the Plan. Dckt. 54. The court continued the hearing on the Motion to Dismiss to September 5, 2018.

SEPTEMBER 5, 2018 HEARING

At the September 5, 2018 hearing on the Motion, Debtor's counsel professed to be working to address issues raised by this court, but the reported activities appeared to consist of counsel merely sending emails to Debtor and the tax professional. Debtor's counsel's efforts did not include follow-ups, letters to the tax professional or their supervisor at H&R Block, and or phone calls being made to the tax professionals to assist Debtor. For her part, Debtor appeared in court with some tax documents, but had not delivered the documents to the Chapter 13 Trustee prior to the hearing.

Debtor identified the tax professional currently providing her services as Christine Baily of H&R Block: 11960 W Hwy 88 #301b, Jackson, CA 95642. Debtor also stated the difficulty in Debtor fulfilling her obligations in this case has resulted, at least in part, from the tax professionals at H&R Block working only one day a week—Thursdays. The Debtor and the professionals representing her are creating the significant risk of damages being incurred by the bankruptcy estate.

Determining it was necessary to have Debtor's tax professional appear in court to address their purported inability to assist Debtor due to the professionals one-day work week, the court continued the hearing to November 14, 2018, and ordered Christine Baily, the tax professional identified by Debtor to appear at the continued hearing. The court further ordered Debtor Barbara Graves and her attorneys, Gary Fraley, Esq., and Diane Egger, Esq., and each of them shall appear at the November 14, 2018, hearing in person, with no telephonic appearances permitted.

STATUS REPORT

Trustee filed a Status Report on the Motion to Dismiss on October 30, 2018. Dckt. 60. Trustee states that a cashier's check from the Debtor in the amount of \$3,847.31 was received October 22, 2018. A note accompanying the check stated "\$2,500 tax return, \$1,347.31 Mo Mortgage Pymt."

Trustee argues Debtor has only provided an additional \$2,500 from tax returns to date, and not the \$8,015.00 in the Order Confirming Plan (Dckt. 44 at 2:5-9) and listed on Debtor's Schedule A/B. Dckt. 1 at 15-16.

APPLICABLE LAW—CONVERSION IN BEST INTEREST OF CREDITORS

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of

this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c). The court engages in a “totality of circumstances” test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1123 (9th Cir. 2013) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing *In re Leavitt*, 171 F.3d at 1224).

RULING

Unfortunately for Debtor, there appears to be cause to dismiss this case. While some payment has provided, it is far from the \$8,015.00 that is due and owing. Debtor has not filed supplemental pleadings explaining the lower amount provided.

At this juncture, if the case were converted to one under Chapter 7, the Trustee could pursue the recovery of the tax refunds for the benefit of the bankruptcy estate and to provide a distribution to creditors. Such conversion is in the better interests of the bankruptcy estate and creditors, rather than just dismissing the case and Debtor diverting the tax refunds to her own use.

At the hearing **XXXXXXXXXXXXXXXXXXXXXXXXXX**.

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 is granted, and the case is **converted to one under Chapter 7/dismissed**.

24. [18-24173-E-13](#) **FERRIC/STACY COLLONS** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **10-24-18 [97]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 24, 2018. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) seeks dismissal of the case on the basis that Ferric and Stacy Collons (“Debtor”) are \$1,620.00 delinquent in plan payments, and have failed to file an amended plan and set the plan for confirmation.

DEBTOR’S DECLARATION

Debtor filed the Declaration of Ferric and Stacy Collons on November 7, 2018. Dckt. 105. The Declaration identifies itself as being “In Opposition to Motion to Dismiss.” The court notes that there is not an opposition filed by Debtor for which the Declaration provides evidentiary support. Fortunately for Debtor, the Motion was not one requiring written opposition and presumably counsel for Debtor will state an opposition at the hearing. *See* Local Bankruptcy Rule 9014-1(f)(2).

The Declaration states Debtor fell delinquent due to the cost of rent, including having to pay \$4,200.00 for the first and last month of rent, and \$500 for a deposit. Debtor also states that Debtor has been

forced to live with a family member on a temporary basis, and that the issues with the storage units in this case have been addressed to an extent (Debtor downsizing to a single unit).

DISCUSSION

On Debtor's Schedule J, Debtor lists having 3 dependent children, aged 8, 10, and 13. Schedule J, Dckt. 12 at p. 1. Therefore, Debtor is seeking housing for a household of 5.

The rent expense described in Debtor's Declaration may be reasonable. However, Debtor has not provided the court with Amended or Supplemental Schedules which could be used to make such a determination. Debtor's current Schedules provide for a rental/housing expense of \$0.00. Schedule J, Dckt. 12. Even without any rent/housing expense, Debtor estimates a monthly disposable income of \$812.83 (the gross income estimated at \$5,046.38 and expenses estimated at \$4,233.55). *Id.* It is unclear how Debtor is going to propose a confirmable plan where Debtor's expenses seem prohibitively high.

Furthermore, Debtor has not explained what the temporary living situation was and what circumstances changed. Debtor states in Debtor's Declaration they "were able to locate a house to rent at the last minute before our family had enough of us." Dckt. 105 at ¶4. Debtor has not provided evidence demonstrating this added expense was necessary or reasonable.

It is unclear why Debtor chose to represent they had no expenses for rent/housing on the filed Schedules which formed the basis of the proposed plan. Debtor knew a rental expense was necessary in this chapter 13 plan; Debtor could have saved money not expended on rent/housing while Debtor searched for a rental (to prepare for the upcoming, very clearly anticipated expenses), but chose not to.

Debtor has not commenced making plan payments and is \$1,620.00 delinquent in plan payments, which represents multiple months of the \$810.00 plan payment. Another payment became due on October 25, 2018. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Debtor has not filed an Amended Plan or a Motion to Confirm a Plan following the court's sustaining multiple objections to confirmation of the proposed plan on October 16, 2018. *See* Dckts. 85-87. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor has offered no explanation for the delay in setting a plan for confirmation. That is also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

25. [18-25075-E-13](#) **LAWRENCE HERTZOG** **MOTION TO DISMISS CASE**
[DPC-1](#) **Pro Se** **10-3-18 [24]**

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

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

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 October 3, 2018. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on several grounds, including the following:

1. Lawrence Hertzog (“Debtor”) is \$3,500.00 delinquent in plan payments, which represents one month of the \$3,500.00 plan payment.
2. Debtor has not provided the Trustee a tax transcript or Federal Income Tax Return with attachments for the most recent prepetition tax year or a written statement that no such documentation exists.
3. Debtor has not provided 2 years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, or proof of license and insurance or a written statement that no such documentation exists.
4. Debtor has not completely filled out his voluntary petition (Dckt. 1).
5. Debtor has not properly served the proposed plan on all interested parties.

DISCUSSION

No opposition has been filed by Debtor.

Debtor is \$3,500.00 delinquent in plan payments, which represents one month of the \$3,500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The following issues with Debtor’s Chapter 13 Plan and Petition have been noted by the Trustee:

- a. Section 2.03. Debtor failed to provide the duration of the plan payments.

- b. Section 3.06 has an administrative monthly of \$330.00 per month, although there is no attorney representation in this case.
- c. Debtor listed Chrysler Cap under Class 2, but failed to list debt on Schedule D of the petition.
- d. Section 2.12(c) is blank. Debtor failed to list a total to priority creditors.
- e. Section 3.14 is blank. Debtor failed to list a percentage dividend and total amount to unsecured creditors.
- f. Debtor failed to identify all previous bankruptcies filed on the Voluntary Petition, Part 2; question 9.

Debtor, not having properly filled out the voluntary petition, cannot make the plan payments under the Plan or comply with the Plan. 11 U.S.C. § 1325(a)(6).

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

The court's files reflect that Debtor has filed, and had dismissed a series of bankruptcy cases in this District, which are listed in the chart below:

Current Chapter 13 Case 18-25075	Filed: August 13, 2018	Dismissed: Pending
Chapter 13 Case 18-24281	Filed July 19, 2018	Dismissed: August 7, 2018
Chapter 13 Case 18-20334	Filed January 22, 2018	Dismissed: June 20, 2018
Chapter 13 Case 17-28182	Filed December 18, 2017	Dismissed: January 5, 2018
Chapter 7 Case 16-20021	Filed January 5, 2016	Dismissed: April 13, 2016
Chapter 13 Case Converted to Chapter 7 12-28995	Filed: May 8, 2012 Voluntary Conversion to Chapter 7: June 14, 2016	Discharged Entered: September 27, 2016
Chapter 13 Case 12-21438	Filed: January 25, 2012	Dismissed: April 25, 2012

Chapter 13 Case 12-20253	Filed: January 6, 2012	Dismissed: January 24, 2012
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Based on the foregoing discussion, cause exists to dismiss the case. The Motion is granted and the case is dismissed.

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

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

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

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

26. [17-27077-E-13](#)
[DPC-2](#)

MICHAEL SCALLIN
Peter Cianchetta

MOTION TO DISMISS CASE
10-24-18 [79]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 24, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case because Debtor has not filed a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 28, 2018. Dckt. 78. To date, Debtor has proposed four plans, none having been confirmed. Trustee argues Debtor may not be capable of filing a confirmable plan in this case. A review of the docket shows that Debtor has not filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

27. [18-21680-E-13](#) **RICKEY/CHRISSELLE FONG** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **10-22-18 [45]**

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 22, 2018. By the court’s calculation, 23 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Ricky Albert Fong and Chriselle De Leon Fong (“Debtor”)are \$4,080.00 delinquent in plan payments, which represents multiple months of the \$1,785 plan payment. Debtor has made 6 payments of \$425.00, but the

Plan provided for payments to be stepped up to \$1,785.99 effective the 4th month of the term. 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 August 21, 2018. Dckt. 44. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

28. [17-22982-E-13](#)
[DPC-3](#)

SANDRA AVILA
Michael Hays

MOTION TO DISMISS CASE
10-17-18 [52]

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 October 17, 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 Sandra Lyne Avila ("Debtor") is \$690.00 delinquent in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Motion on October 30, 2018. Dckt. 56. The Response states Debtor acknowledges the delinquency and expects becoming current before the hearing on the Motion.

DISCUSSION

Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**APPEARANCE OF COUNSEL FOR DEBTOR
REQUIRED FOR NOVEMBER 14, 2018 HEARING**

(Telephonic Appearance Permitted)

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

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's Attorney, and Office of the United States Trustee on October 17, 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 non-responding parties 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 Melissa Chambers ("Debtor") is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR’S DECLARATION AND
SUPPLEMENTAL DECLARATION**

Debtor filed a “Declaration in Response” (“First Declaration”) to Trustee’s Motion on October 31, 2018. Dckt. 88. Debtor then file a second Additional Declaration in Response (“Second Declaration”) to Trustee’s Motion on October 31,2018. Dckt. 90.

In her First Declaration, Debtor testifies “[I did not] even realize I was delinquent until I was advised by my attorney that the Trustee had filed this Motion [to dismiss the bankruptcy case].” Motion, p. 1:22-23; Dckt. 88. Debtor further testifies that upon learning of the multiple defaults, she contacted her bank in Texas, having arranged to have the Plan payments to be made automatically from her account at that bank.

Debtor then testifies that in August 2018 she believed that there was some unusual activity on her “ATM/Debit Card” related to usage at a gas station/mini mart. *Id.*, p. 1:27-28, 2:1-2. She further testifies that Debtor had the bank issue her “a new ATM/Debit card,” but forgot that she had her “Plan payments linked to the other [cancelled ATM/Debit] card.” *Id.*, p. 2-4. So, then only at the end of October 2018 did Debtor make arrangements to make the Plan payments.

Debtor then further testifies that since she lives on a strict budget^{FN.1.} Therefore, she cannot make up the \$600.00 a month payments she never made which are required under her plan. However, Debtor testifies that she can make an additional payment of \$100.00 a month “until the payments are caught up.”

FN.1. The court notes that most, if not all, Chapter 13 debtors seeking the extraordinary relief available under Chapter 13 live on a “strict” budget during the term of their Chapter 13 plan.

In the First Declaration Debtor does not address the fact that in living on a strict budget, she should have the “extra” \$600.00 a month which she has budgeted to be paid under her plan which was never transferred to the Chapter 13 Trustee.

Further, in the First Declaration Debtor provides no explanation as to what she did when reviewing her bank statement and, comparing it to her tight budget, discovered that there was an “extra” \$600.00 in the account. Debtor offers no explanation as to why an authorized electronic transfer from a bank account would be cancelled because Debtor obtained a new ATM/Debit Card or set a new PIN. Such lack of addressing this point sounds in the nature of a feigned ignorance to cover up the diversion of the plan payment monies.

In the First Declaration Debtor does explain that she feels she suffered due to a very inequitable dissolution judgment. Further she has been in a long fight but believes that now she just received a family law ruling in her favor. *Id.*, p. 10-12. Debtor provides no description of this now more favorable ruling and how it benefits her financially. Hearing that Debtor has been in this recent dissolution fight makes the court wonder if Debtor elected to use the required plan payment in her dissolution fight rather than performing her plan.

Then, notwithstanding providing her written testimony in the First Declaration, Debtor believed that she needed to file the Second Declaration. She begins with telling the court that Debtor is “not certain that I explained the bank accounting issue properly in my prior declaration.” Second Declaration, p. 1:22-23; Dckt. 90. This statement is made notwithstanding Debtor has stated in the First Declaration that she was providing her written testimony (which Debtor carefully reviewed before signing the First Declaration) that such testimony was true and accurate, under penalty of perjury.

Debtor then testifies that she did not merely change her ATM/Debit card, but “The entire bank account was closed . . . I have a whole new banking account number and routing number along with the new debit card.” *Id.*, p. 1:23-25. Debtor repeats that she did not “realize” that she was in default for multiple months of payment until her attorney called her. Again, Debtor offers no testimony as to her review of her bank statements and the reconciliation of the monies in her bank account to her “strict budget.”

APPLICABLE LAW

The Local Bankruptcy Rules explicitly require that documents be filed separately, including the following:

1) Filing of Separate Documents. Motions, notices, objections, **responses, replies, declarations**, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.

LOCAL BANKR. R. 9004-2(c)(1)(emphasis added). Failure to comply with this rule is cause alone to deny a motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

When a Motion is set on 28 days’ notice pursuant to Local Bankruptcy Rule 9014-1(f)(1), the rules provide the following requirements as to opposition:

B) Opposition. **Opposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court** by the responding party at least fourteen (14) days preceding the date or continued date of the hearing. **Opposition shall be accompanied by evidence establishing its factual allegations.** Without good cause, no party shall be heard in opposition to a motion at oral argument if written opposition to the motion has not been timely filed. Failure of the responding party to timely file written opposition may be deemed a waiver of any opposition to the granting of the motion or may result in the imposition of sanctions.

The opposition shall specify whether the responding party consents to the Court’s resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017. If the responding party does not so consent, the opposition shall include a separate statement identifying each disputed material factual issue. The separate statement shall enumerate discretely each of the disputed material factual issues and cite the particular portions of the record demonstrating that a factual issue is both material and in dispute. Failure to file the

separate statement shall be construed as consent to resolution of the motion and all disputed material factual issues pursuant to Fed. R. Civ. P. 43(c).

LOCAL BANKR. R. 9014-1(f)(1)(B)(emphasis added).

Failure to file written Opposition

Here, Debtor's counsel has chosen not to file an opposition, but merely have the Debtor dictate lay person testimony to the court. No legal basis is asserted in opposition, no legal authorities are provided, and no attempt is made to explain how the evidence, the First and Second Declaration testimony support the grounds in opposition. In substance, Debtor and her counsel have attempted to have/direct/force the court to advocate for Debtor by merely dumping the testimony, effectively saying, "judge, take this testimony and figure out how and why it sets forth grounds for opposing the Trustee's Motion."

Obviously, the court cannot and does not advocate for one party over the other. Additionally, the court's staff of law clerks, externs, and deputy clerks cannot be drafted to provide cost-free or for a fee associate attorney and paralegal services for a party's counsel.

Debtor has not filed an opposition to the present Motion.

RULING

The failure of Debtor and Debtor's counsel to file an opposition can be addressed through appropriate monetary corrective sanctions. While this does not replace the need to actually prosecute the case by Debtor and Debtor's counsel, the court does consider Debtor's testimony.

The testimony under penalty of perjury in Debtor's First Declaration is that she lives under a very strict budget. This is true of every Chapter 13 debtor diligently performing a Chapter 13 plan. Debtor's next testimony rings hollow and is not credible. She testifies that she did not "realize" that the Chapter 13 Plan payments were not being made from her bank account.

Debtor's monthly plan payment is "only" (which for a person on a tight budget can be a richly sum) \$200. Motion to Dismiss, Dckt. 84. When the Motion to Dismiss was filed, Debtor was two months in default (August and September 2018), with the last payment having been received on August 7, 2018 (which appears to be a late payment which was due on July 25, 2018). The Motion to Dismiss was filed on October 17, 2018.

Debtor testifies that she "first learned" of the default when her attorney called her, which would have been around October 17, 2018. This was in time, to the extent that the default were inadvertent, to make the October 25, 2018 that came due. Debtor did not make that payment, nor has she held that payment ready to pay it with the "extra" \$100 she proposes as a condition of denying the Motion. Instead, the October 2018 payment knowingly not made is withheld, and to be made up six months later.

Debtor's proposed Chapter 13 Plan requires a monthly payment of \$200.00. Dckt. 11. From this, Debtor's counsel is paid \$4,000.00 for representing the Debtor and the Chapter 13 Trustee's fees

(approximately \$16 a payment) are paid. Plan ¶2.06, *Id.* Then, the only claim being paid under the Plan is for Debtor's car and \$180 in Franchise Board taxes.

On Schedule I Debtor states having \$3,013.16 in gross monthly income, which does not include any alimony, support, or other income flowing from the dissolution proceeding. Dckt. 13 at 20-21. On Schedule J Debtor lists having a family unit of two persons - Debtor and a teenage son. *Id.* at 22. While stating income of only \$3,000 a month and supporting a child, Debtor lists as having a \$362 alimony, maintenance, or support payment she is making to someone else.

On the Statement of Financial Affairs Debtor lists having income of \$18,992 in retirement income and \$2,100 in "Spousal Support" for the first six months (or possibly the first five months) of 2018. Statement of Financial Affairs Question 5, *Id.* at 26. This is inconsistent with the information provided on Schedule I. It appears that Debtor is receiving at least \$350 a month in spousal support and \$3,165 in retirement income, which total \$3,515 - which is 16%, \$502, greater than that as stated under penalty of perjury on Schedule I. This difference may well be ever greater in Debtor's favor if she is receiving, and does not appear to be making (at least in connection with the current dissolution proceeding) alimony or support payments to her ex-spouse.

Debtor is delinquent in plan payments, has not presented written opposition to this motion, and has not provided credible testimony in opposition to her multi-month default. Debtor offers no explanation as to how she was "unaware" of there being extra money in her bank account. Debtor offers no explanation as how, for someone on a strict budget, she did not compare her budget to her monthly bank statement. Debtor offers no explanation as to where the knowing (if one were to accept Debtor's testimony that she was surprised upon learning of the August and September defaults) default in the October payment monies are and why they are not available for immediate payment if the court were not to dismiss the case.

Based on the financial information provided on the Statement of Financial Affairs, Debtor's monthly income appears to be substantially more than she states on Schedule I. Additionally, Debtor does not disclose on Schedule I that she is receiving (and has received since at least 2015) spousal support payments of at least \$300 a month.

Cause exists to grant the Motion and dismiss this Chapter 13 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.

30. [18-22497-E-13](#) **ROBERT MAC BRIDE**
[DPC-3](#) **Pro Se**

**CONTINUED MOTION TO DISMISS
CASE
6-11-18 [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—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 June 11, 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 (*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 Robert Mac Bride (“Debtor”) did not commence making plan payments and is \$3,073.00 delinquent in plan payments, which represents one month of the \$3,073.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the court’s files discloses that the present Chapter 13 case is not Debtor’s only recent bankruptcy case. In Chapter 7 case no.17-22283 filed on April 5, 2017, Debtor received his discharged on February 21 2018. Case No. 17-22283 was originally filed as a Chapter 13 case. That case was converted to one under Chapter 7 on Debtor’s oral motion in open court on November 14, 2017. 17-22283; Civil Minutes, Dckt. 88.

Prior to that, Debtor filed Chapter 13 case No. 16-24396 on July 6, 2016, which was dismissed on April 3, 2017. The court's bases for dismissing case No. 16-24396 are stated in the Civil Minutes for the hearing on that Chapter 13 Trustee's Motion to Dismiss that prior case.

Debtor's Chapter 13 Plan filed in this case requires \$3,073.00 in monthly plan payments for sixty months. Dckt. 13. Under the terms of the Plan, the following payments are to be made:

- A. Class 1
 - 1. Home Mortgage Creditor Deutsche Bank
 - a. Post-Petition Current Payment.....\$1,846.65
 - b. Pre-Petition Arrearage Payment.....\$ 609.00
- B. Class 2 Secured Claims
 - 1. Sacramento County Utilities.....\$ 25.00

On Schedule I, Debtor lists monthly take home income of \$5,361.50 (including a "benefit" in the amount of \$150 "by eating at my fiancée's house). Dckt. 12 at 29. On Schedule J, Debtor lists having only \$900 per month in expenses. *Id.* at 30–32. To get to \$900 per month in expenses, some of the questionable expenses include: \$0.00 for dental and medical expenses, \$10 for clothing and laundry, \$57 for transportation (for Debtor's two vehicles, a 1984 Toyota Landcruiser and 1982 Toyota Landcruiser), and \$15 for entertainment per month for sixty months.

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, the court continued the hearing on the Motion to Dismiss to September 5, 2018, at 10:00a.m. Dckt. 37.

TRUSTEE'S RESPONSE

Trustee filed a Response on August 16, 2018. Dckt. 42. Trustee informs the court that Debtor has not resolved grounds for dismissal, and has paid \$0 to the Trustee to date.

SEPTEMBER 5, 2018 HEARING

At the September 5, 2018, hearing on the Motion, the court noted a Motion to Confirm Amended Plan (Dckt. 47) had recently been filed. Dckt. 55. Therefore, the court continued the hearing to November 14, 2018. Dckt. 57.

DISCUSSION

Debtor has not filed supplemental pleadings since the prior hearing on the Motion. Debtor's recent Motion to Confirm plan, being the basis upon which the court continued the prior hearing on this Motion, was denied on October 26, 2018. Order, Dckt. 96. Among causes for denial included delinquency in plan payments, reliance on an overruled objection to claim, and failure to describe assets sought to be liquidated to fund the plan. *See* Dckt. 95.

Cause exists to dismiss this case arising from the default in payment and failure to provide evidence of income. Additionally, it appears Debtor may be overly optimistic as to what constitutes reasonable expenses. The Motion is granted, and the case is dismissed.

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

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

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

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

31. [13-30998-E-13](#)
[DPC-5](#)

RALPH SETTEMBRINO
Mary Ellen Terranella

MOTION TO DISMISS CASE
10-19-18 [164]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 19, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee) argues that Ralph Settembrino ("Debtor") is in material default under the Plan. Debtor filed this case on August 21, 2013, making the 60th month of the Plan due August 2018. Debtor paid \$142,300.77 to date, where Debtor's Plan required \$146,235.85 to complete the Plan.

Debtor's latest confirmed plan (Dckt. 149) called for a lump sum payment of \$8,154.29 prior to the end of the plan, and the order confirming added another \$2,589.76 to that lump sum amount. Debtor is in default in the amount of \$5,826.43 if the September 2018 lump sum payment is to be made.

RULING

Debtor is delinquent in 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.

FINAL RULINGS

32. [18-23603-E-13](#) **MAUREEN HAGAN** **MOTION TO DISMISS CASE**
[DPC-3](#) **Stephan Brown** **10-17-18 [28]**

Final Ruling: No appearance at the November 14, 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 October 17, 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 Maureen Hagan (“Debtor”) is \$1,459.41 delinquent in plan payments. The Chapter 13 Trustee asserts no payment has been received since July 30, 2018.

DISCUSSION

The Trustee asserts Debtor’s case should be dismissed because of the \$1,459.41 delinquency, which represents multiple months of the \$711.47 plan payment. Another plan payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has proffered no opposition to this Motion.

RULING

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

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

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

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

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

33.	<u>18-25114</u> -E-13	DAVID HOWERTON Peter Macaluso	CONTINUED ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-19-18 [17]
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Final Ruling: No appearance at the November 14, 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 21, 2018. The court computes that 19 days’ notice was provided. The hearing was continued to November 14, 2018 at the hearing on October 10, 2018. Dckt. 19.

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 discharged, and the bankruptcy case shall proceed in this court.

The court’s docket reflects that the default in payment that is the subjection 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.

35. [15-28322-E-13](#)
[DPC-4](#)

LISA TOLBERT
Kyle Schmacher

MOTION TO DISMISS CASE
10-16-18 [144]

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (the “Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on November 1, 2018, Dckt. 156; 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 Lisa Tolbert (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss filed by David Cusick (the “Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 156, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

36. [18-25322-E-13](#) **STEFAN POLANSKY**
Michael Hays

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-28-18 [20]

Final Ruling: No appearance at the November 14, 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 30, 2018. The court computes that 45 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 24, 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.

37. [17-21526-E-13](#) **DAVE LEYTO**
[DPC-2](#) **Eric Vandermey**

MOTION TO DISMISS CASE
10-16-18 [30]

Final Ruling: No appearance at the November 14, 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 October 16, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (the “Chapter 13 Trustee”) seeks dismissal on the basis that Dave Leyto (“Debtor”) is delinquent \$6,500.00 in plan payments.

DISCUSSION

Debtor is \$6,500.00 delinquent in plan payments, which represents two months of the \$3,250.00 plan payment. A third payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not proffered any opposition to this Motion.

RULING

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

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

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

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

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

38.	18-24026-E-13	MICHELLE LUND Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 10-1-18 [40]
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Final Ruling: No appearance at the November 14, 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 October 3, 2018. The court computes that 42 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 26, 2018.

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

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

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

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

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.

39. [18-24026-E-13](#) **MICHELLE LUND** **ORDER TO SHOW CAUSE - FAILURE**
 Peter Macaluso **TO PAY FEES**
 10-1-18 [40]

Final Ruling: No appearance at the November 14, 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 October 3, 2018. The court computes that 42 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 26, 2018.

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

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

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

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

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.

40. [18-25226-E-13](#) **RONALD GREGORY**
Justin Kuney

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-25-18 [16]

Final Ruling: No appearance at the November 14, 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 27, 2018. The court computes that 48 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 20, 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.

41. 18-25226-E-13 RONALD GREGORY MOTION TO DISMISS CASE
DPC-2 Justin Kuney 10-18-18 [22]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 14, 2018 hearing is required.

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

42. 18-24231-E-7 DAVID SNEED CONTINUED ORDER TO SHOW CAUSE -
George Burke FAILURE TO PAY FEES
9-10-18 [27]

CASE CONVERTED: 09/24/2018

Final Ruling: No appearance at the November 14, 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 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 discharged, and the bankruptcy case shall proceed in this court.

At the hearing held on October 10, 2018, the matter was continued to November 14, 2018. Order, Dckt. 45. The court's docket reflects that the default in payment that is the subject of the Order to Show Cause has been cured.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

43. [17-26635-E-13](#) **SALLY FIELDS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mohammad Mokarram** **10-17-18 [30]**

Final Ruling: No appearance at the November 14, 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 October 17, 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 Sally Fields (“Debtor”) is \$1,880.00 delinquent in plan payments.

DISCUSSION

Debtor is \$1,880.00 delinquent in plan payments, which represents multiple months of the \$430.00 plan payment. Another payment became due on October 25, 2018, bringing the total to cure the default to \$2,310.00. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

44. [16-24056-E-13](#)
[DPC-2](#)

KEYCHA GALLON
Gabriel Liberman

MOTION TO DISMISS CASE
10-17-18 [53]

Final Ruling: No appearance at the November 14, 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 October 17, 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 Keycha Gallon (“Debtor”) is \$1,456.00 delinquent in plan payments.

DEBTOR’S NONOPPOSITION

Debtor filed statement of nonopposition on October 24, 2018. Dckt. 57.

DISCUSSION

Debtor is delinquent \$1,456.00 in plan payment, which represents multiple months of the \$490.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

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

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

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

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

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

45. [13-32465](#)-E-13 **JUSTIN/AMBER GAMAYO** **MOTION TO DISMISS CASE**
[DPC-6](#) **Mark Wolff** **10-17-18 [82]**

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on November 7, 2018, Dckt. 89; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Justin and Amber Gamayo (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss 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. 87, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

46. [18-23867-E-13](#) **FIAZ JAVED**
 Robert McCann
ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-24-18 [56]

Final Ruling: No appearance at the November 14, 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 26, 2018. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$73.00 due on September 18, 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 November 14, 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 26, 2018. By the court’s calculation, 49 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 Fiaz Javed (“Debtor”) is \$1,050.02 delinquent in plan payments and has failed to serve the Plan filed on July 19, 2018 on all interested parties.

DISCUSSION

Debtor has not filed any opposition to Trustee’s Motion.

Debtor is \$1,050.02 delinquent in plan payments, which represents multiple months of the \$475.34 plan payment. Another payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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).

RULING

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

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

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

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

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

48. [14-28968-E-13](#) **KATHERINE PONGRATZ** **MOTION TO DISMISS CASE**
[DPC-4](#) **Eric Schwab** **10-16-18 [105]**

Final Ruling: No appearance at the November 14, 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 October 16, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case because Katherine Pongratz (“Debtor”) is \$6,235.00 delinquent in plan payments.

DISCUSSION

Debtor has not filed an opposition to the Motion.

Debtor is \$6,235.00, which represents multiple months of the \$2,810.00 plan payment. Another payment became due on October 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Based on the foregoing discussion, 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.

49. [15-28272-E-13](#) **MARAH TORRES** **MOTION TO DISMISS CASE**
[DPC-2](#) **Timothy Walsh** **10-16-18 [47]**

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (the “Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on October 26, 2018, Dckt. 52; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Marah Torres (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

50. [18-24872-E-13](#) **KEITH/LAKEISHA STEWART** **ORDER TO SHOW CAUSE - FAILURE**
Richard Kwun **TO PAY FEES**
10-9-18 [49]

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 11, 2018. The court computes that 34 days' notice has been provided.

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

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

51. [18-25674](#)-E-13 **DESIREE JAMES**
Julius Cherry

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
10-15-18 [19]

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 17, 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: \$79.00 due on October 10, 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.

52. [14-30278-E-13](#) **GARY SHREVES AND KAREN** **MOTION TO DISMISS CASE**
[DPC-8](#) **BAYSINGER- SHREVES** **10-16-18 [261]**
 Mark Wolff

Final Ruling: No appearance at the November 14, 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 October 16, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Gary Wayne Shreves and Karen Lee Baysinger-Shreves (“Debtor”) is \$2,004.00 delinquent in plan payments, which represents multiple months of the \$1,002.00 plan payment. Before the hearing, another plan payment will be due. Debtor offers no explanation explaining the delinquency. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

53. [17-20179-E-13](#) **EDGAR/CLAUDIA WHIPPLE** **MOTION TO DISMISS CASE**
[DPC-1](#) **Matthew Gilbert** **10-16-18 [18]**

Final Ruling: No appearance at the November 14, 2018, hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on November 6, 2018, Dckt. 25; 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 Edgar Alan Whipple and Claudia Lynne Whipple (“Debtor”); the Ex Parte Motion is granted, The Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 25, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the November 14, 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 October 17, 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 Renato Bernardes and Eva Bernardes (“Debtor”) are \$5,626.34 delinquent in plan payments, which represents over one month of the \$4,792.47 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

55. [16-21786-E-13](#) **EVELIA MARQUEZ** **MOTION TO DISMISS CASE**
[DPC-2](#) **Mohammad Mokarram** **10-16-18 [27]**

Final Ruling: No appearance at the November 14, 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 October 16, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Evelia Cortes Marquez (“Debtor”) is \$2,329.12 delinquent in plan payments, which represents multiple months of the \$780.00 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 has not filed any opposition to this Motion.

Based on the foregoing discussion, 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.

56.	<u>16-22687-E-13</u>	DAVID/SHARON NEIHART	CONTINUED MOTION TO DISMISS
	<u>DPC-2</u>	Aubrey Jacobsen	CASE
			8-6-18 [35]

Final Ruling: No appearance at the November 14, 2018, hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental *Ex Parte* Motion to Dismiss the pending Motion on November 7, 2018, Dckt. 68; 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 David Earl Neihart and Sharon Dale Neihart (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 68, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

57. [18-21488-E-13](#) **DANIEL/ALLISON BRENNAN** **MOTION TO DISMISS CASE**
[DPC-2](#) **Charles Hastings** **10-22-18 [88]**

Final Ruling: No appearance at the November 14, 2018, hearing is required.

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

58. [18-24688](#)-E-13 ELIZABETH/ELRICO MOORE ORDER TO SHOW CAUSE - FAILURE
David Foyil TO PAY FEES
10-1-18 [37]

Final Ruling: No appearance at the November 14, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on October 3, 2018. The court computes that 42 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 25, 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.

59. [17-22489-E-13](#)
[DPC-2](#)

EUGENE NIERI
Mikalah Liviakis

MOTION TO DISMISS CASE
10-16-18 [\[121\]](#)

Final Ruling: No appearance at the November 14, 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 October 16, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Eugene Nieri (“Debtor”) is \$3,144.50 delinquent in plan payments, which represents multiple months of the \$1,600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Based on the foregoing discussion, 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.