

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**January 9, 2019 at 10:00 a.m.**

**Notice**

**The court has reorganized the cases, placing all of the Final Rulings in the second part of these Posted Rulings, with the Final Rulings beginning with Item 44.**

---

1. [16-27300-E-13](#)      **LEO AUGUST**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Mark Wolff**                      **12-7-18 [56]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Leo August ("Debtor"), is delinquent \$5,600.00 in plan payments, consisting of 2 monthly plan payments. Before the hearing, another payments will be due.

**DEBTOR'S OPPOSITION**

Debtor's counsel filed an Opposition on December 26, 2018. Dckt. 60. The Opposition states

**January 9, 2019 at 10:00 a.m.**

Debtor has yet to meet with counsel to discussing the present Motion.

## **DISCUSSION**

Debtor is \$5,600.00 delinquent in plan payments, which represents multiple months of the \$2,800.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case based on Debtor's failure to make plan payments. The Motion is granted, and the case is dismissed.

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

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

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

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

**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 November 28, 2018. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtors, Paul Ricco D'Angelo and Sheri Lynn D'Angelo ("Debtor"), are delinquent \$4,600.00 (two monthly payments) under the terms of the plan.
2. Debtor's Motion to Confirm Plan set to be heard October 16, 2018 was denied, and no amended plan has been filed.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 26, 2018. Dckt. 68. Debtor believes Debtor will be current on proposed plan payments before the time of this hearing, and states a motion to confirm third amended plan is scheduled for hearing January 29, 2019.

## **DISCUSSION**

Debtor is \$4,600.00 delinquent in plan payments, which represents multiple months of the \$2,300.00 proposed 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 file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 17, 2018. Order, Dckt. 55. Despite statements made in Debtor's Opposition indicating such, 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, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

**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 December 6, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXXXXXX</span>.</b>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. Michael Walker, the debtor ("Debtor"), is delinquent \$2,860.00 in plan payments.
2. Proof of Claim, No. 8, filed by the IRS indicates Debtor has not filed a tax return for 2017, and therefore has not filed the required returns during the 4 year period preceding filing.
3. Debtor has not provided Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petition filing year, or a statement that no such documentation exists.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response to the Trustee's Motion on January 9, 2018. Dckt. 28. Debtor states he fell behind in proposed plan payments because a creditor has continued to garnish his wages post-filing of this bankruptcy case, and Debtor has undergone hip surgery. Debtor is currently receiving \$802.00 weekly in SDI benefits and expects to have made \$2,306 in plan payments before the date of this hearing. The Opposition also states his 2017 tax returns have been filed and provided to the Trustee.

Debtor requests Trustee's Motion be denied, or that the hearing on the Motion be continued to February 12, 2019.

## DISCUSSION

Debtor is \$2,860.00 delinquent in plan payments, which represents slightly more than one month of the \$2,430.00 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).

Proof of Claim, No. 8, filed by the IRS indicates Debtor has not filed a tax return for 2017. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). While Debtor's counsel argues in a Response that the 2017 return has been filed, no actual evidence has been provided supporting the allegation. Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

As no return has been filed, Debtor also has not provided to the Trustee 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).

On December 21, 2018, Debtor filed a proposed Amended Plan. Dckt. 32. The additional provisions provide that no payments will be made for the Class one secured claim arrearage until Debtor's counsel is paid \$3,600 for his attorney's fees (approximately six months). The Motion to confirm the Amended Plan appears to be in compliance with Federal Rule of Bankruptcy Procedure 9013, stating grounds with particularity upon which the requested relief is based. Motion, Dckt. 30.

Debtor provides his declaration in support of the Motion to Confirm. Dckt. 33. The Motion appears to provide personal knowledge testimony as required by Federal Rules of Evidence 601 and 602. The Declaration does begin with the conflicting statement that some of the testimony is not based on personal knowledge, but only stated based on information and belief (which is a motion or complaint pleading device, not permissible for a person to provide unknown, but hope and belief testimony because if it happened to be true the declarant would win). It also appears that Debtor has elected to waive his attorney-client privilege and voluntarily disclose advice communicated to him by his attorney. Declaration ¶ 4, Dckt. 33.

At the hearing, ~~XXXXXXXXXXXXXXXXXX~~.

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

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

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

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

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

4. [15-29404-E-13](#)      **TAEVONA MONTGOMERY**      **MOTION TO DISMISS CASE**  
[DPC-6](#)      **Peter Macaluso**      **12-10-18 [235]**

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

-----

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Taevona Naelon Montgomery ("Debtor"), is delinquent \$900.00 in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 26, 2018 requesting the Motion be denied because Debtor's plan is in its final month and Debtor intends to cure the delinquency. Dckt. 239. In her supporting Declaration, Debtor explains she missed payments due to childcare expenses she is responsible for and promises to become current before the date of this hearing.

#### **DISCUSSION**

Debtor is \$900.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

5. [13-35706-E-13](#)      **ARRON/FELICIA CARRILLO**      **MOTION TO DISMISS CASE**  
[DPC-4](#)                      **Peter Macaluso**                      **12-7-18 [60]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Arron Joseph-Torres Carrillo and Felicia Murina Carrillo (“Debtor”) are delinquent \$3,145.00 in plan payments.



## DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 26, 2018. Dckt. 64. Debtor states the delinquency resulted from a miscommunication with prior counsel and a misreading of the Trustee's website leading Debtor to believe the final payment was due in September 2018 and was made.

## DISCUSSION

Debtor is \$3,145.00 delinquent in plan payments, which represents multiple months of the \$1,045.00 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).

While Debtor states under penalty of perjury that the delinquency was in part caused by a miscommunication with prior counsel, Debtor does not elaborate what the miscommunication was. Debtor's previous counsel was substituted with current counsel on January 4, 2016—nearly 3 years ago. Order, Dckt. 25. Thus, a three year old “miscommunication” would not appear to be the reason for the current defaults.

Debtor also states Debtor mistakenly thought payments were completed in September 2018 due to a misreading of the Trustee's website. Debtor has not explained what content on the Trustee's website caused the misunderstanding. Further, given that Debtor is represented by knowledgeable counsel, and that presumably Debtor and counsel clearly reviewed the plan and confirmed Debtor's obligation to make payments, it is unclear, and not credible, that Debtor acting without counsel would make a determination as to the status of the required plan payments based on information gleaned from the Trustee's website.

Notably, this is Trustee's fourth Motion to Dismiss. Each of Trustee's previous motions to dismiss this case filed May 24, 2016 (Dckt. 26); May 2, 2017 (Dckt. 38); and December 18, 2018 (Dckt. 49) were brought on grounds that Debtor was delinquent in payments. Each motion was brought after Debtor substituted in current counsel, Peter Macaluso.

Given the context of the case and number of prior delinquencies, Debtor's explanation for delinquency is not persuasive. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

6. [16-25515-E-13](#) **JENNIFER MUNOZ**  
[DPC-3](#) **Mary Ellen Terranella**

**MOTION TO DISMISS CASE**  
**12-10-18 [43]**

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

-----

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Jennifer Roxanne Munoz ("Debtor"), is delinquent \$1,000.00 in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 23, 2018. Dckt. 47. Debtor states she fell behind in payments after assisting her parents with an increased mortgage payment. Debtor states further that her brothers have indicated they will assist Debtor's parents, preventing future delinquency.

Debtor testifies she made a \$500 payment on December 17, 2018, and will make another \$500.00 payment on December 28, 2018 and January 7, 2019.

#### **DISCUSSION**

Debtor is \$1,000.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

-----

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Sharry Lynn Stevens-Goree ("Debtor"), is \$12,108.00 delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response December 26, 2018. Dckt. 141. Debtor's Response indicates a new plan has been filed to address the delinquency, and states the new plan is confirmable and proposes to pay unsecured claims an 100 percent dividend.

#### **DISCUSSION**

Debtor is \$12,108.00 delinquent in plan payments, which represents multiple months of the \$4,036.00 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).

Despite representations that a new plan and motion to confirm plan have been filed, a review of the docket in this case does not support that allegation. Unfortunately for Debtor, a promise to file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.<sup>FN. 1</sup>

-----  
FN. 1. This is not Debtor's first recent Chapter 13 case. Debtor has filed and had dismissed the following prior cases:

13-20625 - Chapter 13

Filed January 17, 2013

Dismissed November 1, 2013

Case Dismissed due to \$7,320.00 defaults in payments. 13-2625; Mtn to Dismiss, Dckt. 55

14-28303 - Chapter 13

Filed August 15, 2014

Dismissed March 3, 2016

Case Dismissed due to \$10,394.58 defaults in payments. 14-28303; Mtn to Dismiss, Dckt. 40

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

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

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

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

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

-----

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Maureen Cline ("Debtor"), is \$3,152.00 in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response on December 26, 2018. Dckt. 80. Debtor's counsel states in the Response that he has not been able to contact Debtor.

#### **DISCUSSION**

Debtor is \$3,152.00 delinquent in plan payments, which represents multiple months of the \$1,634.00 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).

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

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

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

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

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

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

9. [18-21720-E-13](#)      **MICHAEL/BRANDI SMIRL**      **MOTION TO DISMISS CASE**  
[DPC-1](#)                      **Gabriel Liberman**                      **12-11-18 [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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Michael Jon Smirl and Brandi Victoria Smirl (“Debtor”), is delinquent \$1,956.55 in plan payments.

#### **DEBTOR’S RESPONSE**

Debtor filed a Response to the Trustee’s Motion on December 26, 2018. Dckt. 22. Debtor states a payment of \$1,956.55 will be made on December 27, 2018, and another one at the time of the hearing on the Motion.

#### **DISCUSSION**

Debtor is \$1,956.55 delinquent in plan payments, which represents one month of the \$1,956.55 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).





## DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 26, 2018. Dckt. 42. Debtor states a modified plan will be filed and served before the date of the hearing on the Motion.

## DISCUSSION

Debtor is \$7,953.76 delinquent in plan payments, which represents multiple months of the \$3,422.97 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).

On January 4, 2019, Debtor filed a Modified Chapter 13 Plan. Dckt. 49. A summary review of the Motion to Confirm (Dckt. 46) and Declaration in support (Dckt. 50) appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

Based on the amended plan having been filed and the Debtor appearing got be actively prosecuting the case.

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

**IT IS ORDERED** that the Motion to Dismiss is ~~granted/denied without prejudice~~.

11. [18-26629-E-13](#)      **DWAYNE MONEY**  
**Richard Jare**

**ORDER TO SHOW CAUSE - FAILURE**  
**TO PAY FEES**  
**11-27-18 [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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 29, 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: \$77.00 due on November 26, 2018.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
--

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.

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The Debtor, Dwayne E. Money ("Debtor") is \$200.00 delinquent in plan payments;
2. Debtor has not noticed the proposed plan on all parties in interest or set a confirmation hearing;
3. Debtor has not provided Trustee with employer pay advices from the 60 day period preceding filing; and
4. Debtor has not provided Trustee with a tax transcript, tax return, or written statement that such documentation does not exist for the most recent pre-petition filing year (2017).

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on December 26, 2018. Dckt. 37. In the Opposition, Debtor's counsel indicates a possible breakdown in the attorney-client relationship, with the Debtor communicating directly to the Trustee and not counsel.

Debtor's counsel states he is confident Debtor is aware of two missed filing fees, as well as the payments and documentation needed to address this Motion. Debtor's counsel argues it was the court clerk's fault for not filing a motion to confirm Debtor's proposed plan.

Along with Debtor's Opposition, Debtor's counsel filed as an unnamed Exhibit text messages from Debtor. The Exhibit is not authenticated, and there is testimony explaining the text.

## **DISCUSSION**

### **Grounds For Dismissal**

Debtor is \$200.00 delinquent in plan payments, Debtor having paid \$0.00 into the plan to date. 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 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 (and not the court clerk) must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided 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).

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).

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

### **Failure to Pay Filing Fees**

A review of the docket shows the court has issued two Orders To Show Cause based on Debtor's failure to pay filing fees, each set to be heard the same day as the hearing on the present Motion. *See* Dckt. 16, 31. At the hearing, the court sustained each Order and dismissed the case.

### **Attorney-Client Privilege**

California Rule of Professional Responsibility 1.6 governing confidential information of a client provides the following:

(A) A member shall not reveal information protected from disclosure by Business and Professions Code section 6068, subdivision (e)(1) without the informed consent of the client, or as provided in paragraph (B) of this rule.

The comments to that Rule explain further:

[1] Duty of confidentiality. Paragraph (A) relates to a member's obligations under Business and Professions Code section 6068, subdivision (e)(1), which provides **it is a duty of a member: "To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client."** A member's duty to preserve the confidentiality of client information involves public policies of paramount importance. (In Re Jordan (1974) 12 Cal.3d 575, 580 [116 Cal.Rptr. 371].) Preserving the confidentiality of client information contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld. Paragraph (A) thus recognizes a fundamental principle in the client-lawyer relationship, that, in the absence of the client's informed consent, a member must not reveal information relating to the representation. (See, e.g., Commercial Standard Title Co. v. Superior Court (1979) 92 Cal.App.3d 934, 945 [155 Cal.Rptr.393].)

[2] Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality. **The principle of client-lawyer confidentiality applies to information relating to the representation, whatever its source, and encompasses matters communicated in confidence by the client, and therefore protected by the attorney-client privilege,** matters protected by the work product doctrine, and matters protected under ethical standards of confidentiality, all as established in law, rule and policy. (See In the Matter of Johnson (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; Goldstein v. Lees (1975) 46 Cal.App.3d 614, 621 [120 Cal. Rptr. 253].) The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a member may be called as a witness or be otherwise compelled to produce evidence concerning a client. A member's ethical duty of confidentiality is not so limited in its scope of protection for the client-lawyer relationship of trust and prevents a member from revealing the client's confidential information even when not confronted with such compulsion. Thus, a member may not reveal such information except with the consent of the client or as authorized or required by the State Bar Act, these rules, or other law.

CA ST RPC Rule 1.6 (emphasis added).

Debtor's counsel filed as an Exhibit text communications received by Debtor regarding the scope of counsel's representation. However, Debtor's counsel has yet to explain whether an exception to the duty of confidentiality exists, or whether Debtor provided consent for the disclosure.

At the hearing, **XXXXXXXXXXXXXXXXXX**.

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

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

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

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

13.    [17-25945](#)-E-13        **HARRY/JOSEPHINE NASH**                    **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Peter Macaluso**                                **12-11-18 [77]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Harry R. Nash and Josephine Ann Nash (“Debtor”), are \$15,992.00 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to Trustee’s Motion on December 21, 2018. Dckt. 81. Debtor promises to file a modified plan before the hearing date.

## **DISCUSSION**

Debtor filed a Modified Plan and Motion to Confirm on December 29, 2018. Dckts. 84, 87. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 86. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

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

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

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

14. [18-20345-E-13](#)      **MATTHEW THOMPSON**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Gabriel Liberman**      **12-11-18 [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.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Matthew Blair Thompson ("Debtor") is \$2,113.70 delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Debtor filed a Response to the Motion on December 26, 2018 indicating an intent to cure the delinquency before the date of the hearing on the Motion. Dckt. 33.

#### **DISCUSSION**

Debtor is \$2,113.70 delinquent in plan payments, which represents multiple months of the \$2,019.04 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, 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 The Chapter 13



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

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

15. [18-23948-E-13](#)      **CHERYL MCNEAL**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Richard Jare**      **12-11-18 [37]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Cheryl Renee McNeal (“Debtor”) is \$1,170.25 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to Trustee’s Motion on December 26, 2018. Dckt. 41. Debtor states that she fell delinquent after incurring travel costs associated with her adult daughter’s need for a kidney donor. Debtor states further she will cure the delinquency before the time of the hearing on the Motion.

#### **DISCUSSION**

Debtor is \$1,170.25 delinquent in plan payments, which represents one month of the \$1,170.25 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, 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 The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

16. [18-24149-E-13](#)      **DESHAUNNA PAYNE**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mary Ellen Terranella**      **11-14-18 [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.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 14, 2018. By the court's calculation, 56 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Deshaunna Tranise Payne ("Debtor"), has not filed an Amended Plan or set it for confirmation after the court sustained Trustee's Objection to Confirmation on September 18, 2018.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Motion on December 26, 2018. Dckt. 49. Debtor indicates an intent to file a motion to confirm amended plan by the time of the hearing on this Motion, after obtaining sufficient estimates as to the value of her home.

#### **DISCUSSION**

Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 18, 2018. Order, Dckt. 34. 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).

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

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

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

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

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

17.	<a href="#"><u>18-25752</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	<b>RICARDO CORTEZ</b> <b>Timothy Walsh</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>10-30-18 [23]</b>
-----	---	---	---

**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 -----.

<b>The Motion to Dismiss is granted and the case is dismissed.</b>
--

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.

### **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.

### **NOVEMBER 14, 2018 HEARING**

At the November 14, 2018, hearing, the court continued the hearing on the Motion to January 9, 2019 to allow Debtor to cure delinquency in payment, appear at the continued Meeting of Creditors, and provide to the Trustee any remaining documents. Dckts. 30, 31.

### **TRUSTEE’S STATUS REPORT**

Trustee filed a Status Report on December 12, 2018. Dckt. 33. Trustee states Debtor has appeared at the Meeting of Creditors on November 15, 2018, and that it appears no documentation exists for Debtor’s tax transcript or tax return for the most recent pre-petition filing year.

Trustee states further he continues to seek dismissal based on Debtor’s \$1,759.00 delinquency in plan payments and failure to serve the proposed plan on parties in interest or set a confirmation hearing.

### **DEBTOR’S OPPOSITION TO STATUS REPORT**

Debtor filed an Opposition to Trustee’s Status Report on December 17, 2018. Dckt. 37. Debtor states barely that he anticipates all issues will be resolved by the date of the hearing on the Motion.

## DISCUSSION

Debtor is \$1,759.00 delinquent in plan payments, which represents one month of the \$1,759.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Since the prior hearing in October 2018, Debtor still has not properly served 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).

Based on the foregoing, 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 hearing on the Motion is granted, and the case is dismissed.

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

-----

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Emma Lee Gill ("Debtor"), is \$1,212.02 delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to Trustee's Motion on December 18, 2018. Dckt. 34. Debtor promises to file a modified plan and motion to confirm said plan to address Trustee's Motion.

#### **DISCUSSION**

Debtor filed an Amended Plan and Motion to Confirm on December 18, 2018. Dckts. 37, 38. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 41. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

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

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

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

19. [15-23156-E-13](#) **GUILLERMO/LURDES MEDINA** **MOTION TO DISMISS CASE**  
[DPC-6](#) **Joseph Canning** **12-10-18 [84]**

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

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Guillermo Medina and Lurdes M. Medina (“Debtor”), are \$2,750.0 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed a Reply to Trustee’s Motion on December 26, 2018. Dckt. 88. Debtor states Debtor is gathering funds to cure the delinquency.

#### **DISCUSSION**

Debtor is \$2,750.0 delinquent in plan payments, which represents one month of the \$2,750.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is



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

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

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

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

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

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

20. [18-26256](#)-E-13 **SHERMAN RATLIFF**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-7-18 [35]**

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 9, 2018. The court computes that 31 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on December 3, 2018.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
---

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.

21. [18-26256-E-13](#) SHERMAN RATLIFF  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-7-18 [20]**

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 9, 2018. The court computes that 61 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 2, 2018.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
---

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

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 21, 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). 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).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Sherman Lee Ratliff ("Debtor"), failed to appear at the Meeting of Creditor held November 15, 2018. The Meeting has been continued to January 17, 2019;
2. Debtor failed to provide the Trustee with a tax transcript or tax return for the most recent pre-petition filing year, or a statement that no such documentation exists;
3. Debtor failed to provide Trustee with employer pay advices for the 60 days prior to filing;
4. An Order to Show Cause issued by the court indicates debtor has not paid filing fees; and
5. Debtor is a serial filer, having filed three other cases in 2018 (cases no. 18-21338; 18-24778; and 18-25416).

## 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 provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(I); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided 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).

Trustee also raises Debtor's failure to pay filing fees and three other filings within the same year. Debtor's serial filings suggest the case may not be filed in good faith.

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

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

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

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

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

**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 and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Taneshia Lannette Wray ("Debtor") is delinquent \$3,040.51 in proposed plan payments;
2. Debtor failed to serve her proposed plan on all interested parties and set a confirmation hearing;
3. Debtor failed to provide the Trustee a copy of her tax transcript or tax return, or a statement that no such documentation exists, for the most recent pre-petition tax year.

## DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Trustee's Motion on December 21, 2018. Dckt. 51. Debtor states she will file, set, and serve an Amended Plan before the date of the hearing to address the Trustee's Motion.

## DISCUSSION

Debtor is \$3,040.51 delinquent in plan payments, having paid \$0.00 into the plan to date. 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 properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not 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).

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

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

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

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

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

24. [15-28959-E-13](#)      **ANTHONY/ANGEL GUTIERREZ**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Thomas Gillis**      **12-10-18 [43]**

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

-----

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Anthony Gutierrez and Angel Gutierrez ("Debtor"), is \$1,853.00 delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an "Objection" opposing Trustee's Motion on December 26, 2018. Dckt. 47. Debtor states Debtor is working to cure the delinquency.

#### **DISCUSSION**

Debtor is \$1,853.00 delinquent in plan payments, which represents multiple months of the \$626.00 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, 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 The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [17-23659-E-13](#)      **FRANCISCO DOMINGUEZ**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Thomas Gillis**      **12-7-18 [44]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Francisco Ivan Dominguez (“Debtor”), is \$1,714.84 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an “Objection” opposing Trustee’s Motion on December 26, 2018. Dckt. 47. Debtor states Debtor is working to cure the delinquency.

#### **DISCUSSION**

Debtor is \$1,853.00 delinquent in plan payments, which represents slightly more than one month of the \$1,548.73 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, 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 The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

26. [17-24960-E-13](#)      **DOUGLAS/VALERIE LUTES**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Peter Macaluso**                      **12-11-18 [74]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Douglas Matthew Lutes and Valerie Lyn Lutes (“Debtor”), are \$3,900.00 delinquent in plan payments.

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Trustee's Motion on December 26, 2018. Dckt. 78. Debtor states Debtor will file, set, and serve a modified plan before the date of the hearing on this Motion.

## **DISCUSSION**

Debtor \$3,900.00 delinquent in plan payments, which represents one month of the \$3,900.00 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, a promise to file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Cynthia J. Paysinger (“Debtor”), is \$5,459.59 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to the Trustee’s Motion on December 11, 2018. Dckt. 82. Debtor states a modified plan will be filed, set for hearing, and served before the date of the hearing on the Motion.

#### **DISCUSSION**

Debtor filed a Modified Plan and Motion to Confirm on December 29, 2018. Dckt. 92, 96. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 94. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

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

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

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

28. [17-20471](#)-E-13      **DEANNA TORREZ**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Peter Macaluso**      **12-10-18 [54]**

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

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

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

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Deanna Maria Torrez (“Debtor”) is delinquent \$640.00 in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to Trustee’s Motion on December 26, 2018. Dckt. 58. Debtor states a modified plan will be filed, set for hearing, and served by the date of the hearing on this Motion in order to address Trustee’s grounds for dismissal.

#### **DISCUSSION**

Debtor filed a Modified Plan and Motion to Confirm on January 2, 2019. Dckt. 61, 65. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 63. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based

upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

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

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

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

29.	<a href="#"><u>18-24772</u></a> -E-13	<b>NICOLE JACKSON</b> <b>Rafael Icaza</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-3-18 <a href="#"><u>61</u></a></b>
-----	---------------------------------------	--	--

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

-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 5, 2018. The court computes that days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on November 28, 2018.

<p><b>The Order to Show Cause is sustained, and the case is dismissed.</b></p>
--

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

30.     [18-24772-E-13](#)     **NICOLE JACKSON**     **MOTION TO DISMISS CASE**  
          [DPC-2](#)           **Rafael Icaza**           **11-14-18 [53]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 14, 2018. By the court’s calculation, 56 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).

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

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

1.       The debtor, Nicole M. Jackson (“Debtor”), is delinquent \$328.66 in plan payments; and
2.       Debtor has not served or set a confirmation hearing for her Amended Plan.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to the Trustee’s Motion on December 26, 2018. Dckt. 66. Debtor states she fell delinquent due to moving costs, and has worked to cure the delinquency, which in turn has interfered with her ability to meet with counsel and discuss her case. Debtor states she plans to meet with

her attorney December 28, 2018 to review a new amended plan which can be filed to address Trustee's Motion.

## **DISCUSSION**

Debtor is \$328.66 delinquent in plan payments, which represents slightly less than one month of the \$509.00 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 properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has indicated an intent to file a new amended plan to address Trustee's grounds for dismissal. Unfortunately for Debtor, a promise to file an amended plan is not evidence that resolves the Motion. No plan having 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 The Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**18-24872-E-13**

**KEITH/LAKEISHA STEWART**  
**Richard Kwun**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
11-5-18 [64]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 7, 2018. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on October 31, 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.



**18-24872-E-13**

**KEITH/LAKEISHA STEWART**  
**Richard Kwun**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
12-5-18 [72]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 7, 2018. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on November 30, 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.

33. [18-24872-E-13](#)      **KEITH/LAKEISHA STEWART**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Richard Kwun**      **12-11-18 [74]**

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

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is denied without prejudice.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Keith Anthony Stewart and LaKeisha Michelle Stewart ("Debtor"), are \$3,370.00 delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Trustee's Motion on December 26, 2018. Dckt. 78. Debtor states the delinquency resulted from the following:

- a. Vehicle repairs
- b. Debtor husband being off work due to a serious illness.
- c. A dispute with Uber that arising from a passenger that vandalized Keith's vehicle (it took two and half weeks to investigate and resolve)
- d. Down times due to vehicle inspection by Uber and Lyft.
- e. Peaks and valleys of Uber earnings and how to manage the expected income with the largest income surge this December.
- f. Down times due to annual background checks including driving

history verification.

g. Debtor husband has begun working at various school districts as a substitute custodian and will work as a campus safety officer beginning in January. This supplemental income will buttress the debtor husband's income when ride work is slow.

h. Proof of income for substitute work will be submitted in Debtors' motion to modify plan.

Debtor states further that Trustee's grounds for dismissal will be addressed through the filing of a modified plan.

## **DISCUSSION**

Debtor filed a Modified Plan and Motion to Confirm on January 2, 2019. Dckts. 81, 83. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 85. 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.

No supplemental or amended schedules have been filed with the Modified Plan demonstrating changes to income or expenses. Where the plan payments have increased from \$1,685 monthly to \$2,092, and where Debtor has already fallen delinquent, it is not entirely clear how the Modified Plan will be feasible.

Notwithstanding shortcomings which Debtor's counsel will need to address before the hearing on the motion to confirm modified plan, the Debtor appears 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.

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

-----

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Nicole Preston ("Debtor"), is \$604.00 delinquent in plan payments; and
2. Debtor will not complete the plan within 60 months. The plan payment net of Trustee fees and Class 1 installments is \$229.52. With a debt of \$15,067.00 remaining to be paid, 66 months remain (for a total of 84 months).

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to the Trustee's Motion. Dckt. 61. Debtor states the delinquency will be cured before the hearing on this Motion, and a modified plan will be filed to make the plan term 60 months.

## **DISCUSSION**

Debtor is \$604.00 delinquent in plan payments, which represents slightly less than one month of the \$880.00 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 is in material default under the Plan because the current plan will take 84 months to

complete. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

While Debtor states the delinquency will be cured and a modified plan filed to address the overextended plan term, a promise to pay and file a modified plan is not evidence that resolves the Motion. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

35. [18-26475](#)-E-13      AMANDA SHRINER  
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-19-18 [\[35\]](#)**

**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 and Chapter 13 Trustee as stated on the Certificate of Service on November 21, 2018. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 14, 2018.

<b>The Order to Show Cause is sustained, and the case is dismissed.</b>
---

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

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

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.

36. [18-26475](#)-E-13 AMANDA SHRINER  
Ricard Jare

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
12-19-18 [37]**

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

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

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 14, 2018.

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

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

37. [16-24476-E-13](#)      **HENRY/PENELOPE GARCIA**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Bruce Dwiggin**      **12-10-18 [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.

-----

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Henry Moya Garcia and Penelope Lucile Garcia ("Debtor"), are \$500.00 delinquent in plan payments.

#### **DISCUSSION**

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

Debtor has not filed a response or opposition to the Motion.

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

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

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

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

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



dismissed.

38. [18-27680-E-13](#)      **CHERYL BLACK**  
[PGM-1](#)                      **Peter Macaluso**

**MOTION TO EXTEND AUTOMATIC  
STAY  
12-20-18 [14]**

**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 Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 20, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay 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, -----

-----.

<p><b>The Motion to Extend the Automatic Stay is granted.</b></p>
---

Cheryl Marie Black ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 18-26985) was dismissed on December 4, 2018, after Debtor failed to timely file documents. *See* Order, Bankr. E.D. Cal. No. 18-26985, Dckt. 23, December 4, 2018. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor was merely filing to save her home. In the present case, Debtor has now retained counsel, and anticipates new employment with a steady income.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C.

§ 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. *See, e.g., In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at \*6 (Bankr. D. Haw. June 22, 2011) (citing *In re Elliott-Cook*, 357 B.R. 811, 815–16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The Motion is granted, and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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 Extend the Automatic Stay filed by Cheryl Marie Black (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

**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 December 12, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is <span style="color: red;">XXXXXXXXXXXXXX</span>.</b>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, James Calvin Morgan (“Debtor”), failed to provide for the priority claim of the IRS in the amount of \$5,105.68, and is therefore in material default under section 2.13 of the plan terms.

## DEBTOR’S OPPOSITION

Debtor filed an Opposition to the Trustee’s Motion on December 26, 2018. Dckt. 29. Debtor argues that even though the priority claim of the IRS was not specifically provided for, that the plan provides for sufficient funds to satisfy the claim because other secured and unsecured claims were lower than anticipated. Debtor states he has attempted contacting the Trustee to discuss whether a modified plan is necessary.

## DISCUSSION

Debtor is in material default under the Plan because he has not provided for the priority claim of the IRS in the amount of \$5,105.68. Section 2.13 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

At the hearing, XXXXXXXXXXXXXX.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is **xxxxx**.

40.	<a href="#"><u>18-24987</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	<b>OFELIA MADRIGAL</b> <b>Grace Johnson</b>	<b>CONTINUED MOTION TO DISMISS</b> <b>CASE</b> <b>8-29-18 [15]</b>
-----	---	--	--

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 29, 2018. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

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

## **DEBTOR'S OPPOSITION**

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

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

## **OCTOBER 10, 2018 HEARING**

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

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

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

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

At the October 10, 2018 hearing, the court continued the hearing on the Motion to January 9, 2019, to allow Debtor and Counsel to address these issues, as well as prosecute the amendments and possible amended plan that Counsel discussed at the hearing. Dckts, 26, 27.

## **SUPPLEMENTAL MOTION TO DISMISS**

On December 11, 2018, the Trustee filed a Supplemental Motion To Dismiss. Dckt 32. Trustee states in the Supplemental Motion that Debtor is delinquent \$1,790.00 in plan payments. Trustee states further that Debtor has failed to file and set for confirmation an Amended Plan subsequent to the court sustaining Trustee's Objection to Confirmation on October 23, 2018.

## **RULING**

Since the prior hearing, Debtor has not filed any supplemental pleadings or a new plan.

Debtor is \$1,790.00 delinquent in plan payments, which represents multiple months of the \$895.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor did not file a Plan or a Motion to Confirm a Plan following the court's sustaining Trustee's Objection to Confirmation on October 23, 2018. Dckt. 19. 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, and the court's concern over whether the case was filed in good faith as expressed at the prior hearing, 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.

41. [14-30097](#)-E-13      IRVIN/THERESA WHITE      MOTION TO DISMISS CASE  
[DPC-7](#)      Thomas Amberg      12-10-18 [\[172\]](#)

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

-----

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

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Irvin Burnett White and Theresa Nicole White ("Debtor"), is \$1,450.00 delinquent in plan payments.

#### **DEBTOR'S OPPOSITION**

Debtor filed an Opposition to Trustee's Motion on December 21, 2018. Dckt. 176. Debtor states debtor Irvin White lost his job, causing the delinquency in plan payments. Debtor states further debtor White has obtained new employment and will be able to cure the delinquency by the date of the hearing on the Motion.

#### **DISCUSSION**

Debtor is \$1,450.00 delinquent in plan payments, which represents multiple months of the \$725.00 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, 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 The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

42. [17-22614](#)-E-13      **MICHAEL/POLLY LANHAM**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Mark Wolff**      **12-11-18 [110]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 dismissed/converted to one under Chapter 7.~~**

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Michael K. Lanham and Polly A Lanham (“Debtor”), are \$35,900.00 delinquent in plan payments.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition on December 26, 2018. Dckt. 114. The Opposition states Debtor fell delinquent because (1) Debtor Polly Lanham missed two weeks of work due to surgery, and (2) Debtor



believed the lump sum payment was due March 2019 and not November 2018 and have not yet listed their home for sale.

The Opposition states further Debtor is preparing to file a modified Chapter 13 Plan to extend the date for the lump sum payment to July 2019.

Debtor failed (or refuses) to file a Declaration attesting to the facts asserted in the Opposition under penalty of perjury.

## **DISCUSSION**

Debtor is \$35,900.00 delinquent in plan payments, which represents one month of the \$900.00 plan payment and one \$35,000.00 lump sum due in month 18. Before the hearing, another monthly 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).

All of Debtor's plans proposed prior to the Confirmed Plan provided for a lump sum to be made in month 24. *See* Dckts. 11, 62, 70. The Debtor's Amended Plan on the other hand, confirmed on February 27, 2018, provides for the lump sum in month 18. Dckt. 109. The Confirmed Plan is signed by Debtor, confirming Debtor's review and knowledge of the terms of the Amended Plan.

Debtor's Declaration submitted in support of its Motion to Confirm, and reviewed and signed by Debtor under penalty of perjury, states "For these reasons we have proposed to pay the lump sum payment into our plan in month 18. we are currently in month 7." Dckt. 96 at p. 4:5-6. The Declaration also indicates the prime time to sell the residence, as advised by Debtor's real estate agent, is in the spring after the holidays. *Id.* at 3:25-4:1.

Here, Debtor states in its Opposition that Debtor has "contacted a real estate agent." Dckt. 114. This is presumably not new information, as Debtor testified under penalty of perjury in Debtor's prior Declaration filed December 21, 2017 that Debtor contacted a real estate agent. Dckt. 96 at p. 3:24-25.

Debtor also states Debtor's agent suggests listing the property in February 2019. Dckt. 114. This is also not news—in Debtor's prior Declaration, Debtor noted that prices are more favorable in the spring. Dckt. 96 at p. 3:25-4:1.

Not explained is why Debtor has waited over a year to pursue the sale of Debtor's residence. Debtor, knowing the prices are preferable in the spring, did not take action to market the property in the Spring of 2018 despite their Amended Plan being confirmed in February of that year.

While Debtor proposes filing a modified plan, a review of the docket shows no such plan having been filed as of the hearing date. Furthermore, no explanation has been provided for why a modified plan was necessary here; what has been offered is merely that Debtor chose not to pursue sale of Debtor's residence despite representations made to the court under penalty of perjury. It is indisputable that Debtor's delay here is unreasonable and prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9<sup>th</sup> Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or 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 in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7<sup>th</sup> Cir. 1992). Bad faith is one of the general “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9<sup>th</sup> Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9<sup>th</sup> Cir. 1999).

Here, Debtor’s Chapter 13 Plan was to deal with the substantial equity Debtor has in property that is to be sold - stated to be \$120,000 equity. Motion to Confirm, Dckt. 94. Though committing (not merely “promising”) to market and sell the property, Debtor has let it sit idle. Debtor offers no testimony as to how Debtor “thought” that Debtor’s obligation, under Debtor’s Chapter 13 Plan to have the property sold and proceeds distributed by the eighteenth month of the plan did not have to be made until the twenty-sixth month of the Plan. Having now celebrated Christmas 2018 in the home, with no efforts made to market and sell the property over the past eighteenth months, Debtor now seeks to quickly market and rush sell the home during the cold dark month of winter, all to be completed in less than eight weeks. Such does not appear to be the receipt of a plan administrator to market and sell property to obtain its fair market value.

In considering whether to dismiss or convert the case, it appears that having now received twenty-one months of bankruptcy benefit, Debtor is incapable of properly marketing and selling the property. If the court were to dismiss the case, it is questionable whether the non-exempt equity would be paid to creditors. If dismissed, Debtor might file another bankruptcy case, seek another eighteen months to live in the property, promising to sell at some future date, and further improperly delay creditors.

If converted, the Chapter 7 Trustee could take possession of the Property, engage a real estate professional, and then market the property for sale without creating an impairment of a mandated immediate sale. The Trustee could have debtor immediately move out of the estate’s property and have no impediments for the showing of the property.

At he hearing xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is ~~dismissed/converted to one under Chapter 7~~.

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

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

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

**IT IS ORDERED** that the Motion is granted, and the case is ~~dismissed/converted to one under Chapter 7.~~

43. [18-27039](#)-E-13      NADIA KOSTYUK      MOTION TO DISMISS CASE  
[DPC-2](#)      Julia Young      12-18-18 [[73](#)]

**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 December 18, 2018. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

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

1. The debtor, Nadia Kostyuk (“Debtor”), failed to appear at the Meeting of Creditors December 13, 2018. Debtor’s counsel informed Trustee she was out of town on a cruise with her spouse and requested the Meeting be continued to January 17, 2019;
2. Debtor filed her plan using EDC Form 3-080 rather than the current Form 003-080-12;
3. Debtor has not noticed interested parties of the Amended Plan;
4. Debtor failed to file business documents, including a Questionnaire, 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.
5. Debtor failed to provide the Trustee with a tax transcript, tax return, or written statement that no such documentation exists for the most recent pre-petition filing 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).

Debtor’s Amended Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Amended Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

documentation exists.

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

Debtor 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).

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

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

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

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

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

## FINAL RULING

44. [18-25287](#)-E-13      MALIK JOHNSON      MOTION TO DISMISS CASE  
[DPC-3](#)      Kyle Schumacher      11-8-18 [24]

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 8, 2018. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Malik S Johnson ("Debtor"), is \$610.00 delinquent in plan payments;
2. Debtor failed to provide the Trustee a copy of his tax transcript, tax return, or a statement that no such documentation exists, for the most recent pre-petition filing year; and
3. Trustee's Objection to Confirmation (Dckt. 12) was sustained, and Debtor has failed to file a new plan or set a confirmation hearing.

## DISCUSSION

Debtor is \$610.00.00 delinquent in plan payments, which represents multiple months of the \$305.00 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 did not file a Plan or a Motion to Confirm a Plan following the court sustained Trustee's Objection to confirmation to Debtor's prior plan on October 3, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition to the Motion.

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

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

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

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

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

**ANN ADAMS**  
**John Sargetis**

**MOTION TO DISMISS CASE**  
**12-7-18 [66]**

-----

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



**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Ned Ellis Smith and Edna Smith ("Debtor"), is \$825.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$825.00 delinquent in plan payments, which represents one month of the \$825.00 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 has not filed a response or opposition to the Motion.

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

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

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

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

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

47.     [18-20196-E-13](#)     **DEBORAH ANDREASEN**     **MOTION TO DISMISS CASE**  
         [DPC-1](#)             **Kyle Schumacher**             **12-10-18 [33]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
--

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on December 28, 2018, Dckt. 40; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Deborah Rae Andreasen (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 40, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

48. [17-24484](#)-E-13      MELISSA CHAMBERS      CONTINUED MOTION TO DISMISS  
[DPC-4](#)      Bonnie Baker      CASE  
10-17-18 [84]

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 21, 2018, Dckt. 94; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Melissa Marie Chambers (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 94, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Sally Janine Allen ("Debtor"), is \$1,745.00 delinquent in plan payments.

## DISCUSSION

Debtor is \$1,745.00 delinquent in plan payments, which represents one month of the \$1,745.00 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 has not filed a response or opposition to the Motion.

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

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

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

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

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

50. [15-26886-E-13](#)      **DANA THOMPSON**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Kyle Schumacher**      **12-10-18 [81]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Dana Lyn Thompson (“Debtor”), is \$4,980.00 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$4,980.00 delinquent in plan payments, which represents multiple months of the \$1,300.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition to the Motion.

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

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

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

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

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

51. [14-23387-E-13](#) **GREGG/NANITA SCHILLER** **MOTION TO DISMISS CASE**  
[DPC-2](#) **Muoi Chea** **12-10-18 [79]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 19, 2018, Dckt. 87; 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 Gregg Robert Schiller and Nanita Pigar Schiller (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil

Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 87, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

52. [15-20787](#)-E-13      KENNETH JOHNSON      CONTINUED MOTION TO DISMISS  
[DPC](#)-2      Mark Wolff      CASE  
7-27-18 [58]

**Final Ruling:** No appearance at the January 9, 2019, 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 July 27, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Kenneth W. Johnson (“Debtor”) is \$17,434.26 delinquent in plan payments, which represents multiple months of the \$4,703.21 plan payment. Before the hearing, two additional plan payments will 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 Modified Plan because Debtor is delinquent in payments. Section 1.01 and 6 of the Plan (Dckt. 48) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

## DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 10, 2018. Dckt. 62. Debtor states he has been periodically deployed on active duty since November 2017 with the United States Air Force Reserve, resulting in reduced income. Dckt. 63. Debtor has been recently notified he is being deployed from August 6, 2018, through November 8, 2018. *Id.*, ¶ 2. Debtor explains that he has requested time off with his employer the California

State Prison Solano due to deployment, resulting in drastically reduced income. *Id.*, ¶ 4.

Debtor's counsel explains that it has been difficult to develop a modified plan due to Debtor's frequent deployment and fluctuating income. Dckt. 62 at ¶ 4. Debtor's counsel requests a continuance through Debtor's impending deployment.

### **SEPTEMBER 5, 2018 HEARING**

At the September 5, 2018, hearing, the court found Debtor and his counsel appeared to be proceeding under the Chapter 13 case in good faith. Dckt. 66. Seeing that Debtor's military commitment makes the prosecution of this case more challenging than usual, the court continued the hearing on the Motion to January 9, 2018. Order, Dckt. 67.

### **DEBTOR'S NON-OPPOSITION**

On December 26, 2018, Debtor filed a statement of non-opposition to the Trustee's Motion. Dckt. 69.

### **RULING**

Debtor is delinquent in plan payments. Failure to make payments under the Modified Plan is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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



53. [18-25075](#)-E-13      LAWRENCE HERTZOG  
[DPC-1](#)                      Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
10-3-18 [\[24\]](#)

DEBTOR DISMISSED: 12/21/2018

Final Ruling: No appearance at the January 9, 2019 Hearing is required.

-----

The Bankruptcy Case having been dismissed by prior order of the court (Dckt. 50) pursuant to this Motion, **this Matter is removed from the Calendar.**

David Cusick ("the Chapter 13 Trustee") filed this Motion to Dismiss 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.

Dckt. 24.

After a hearing on November 14, 2018, the court issued an Order continuing the hearing to January 9, 2018. Order, Dckt. 45. The court also issued a conditional order of dismissal, with the case dismissed if the \$7,020.00 to the Trustee by December 10, 2018. *Id.*

On December 18, 2018, Trustee filed a the Declaration of Christina Lloyd to introduce evidence that Debtor had not made the payment required by the conditional dismissal order. Dckt. 49. Thereafter, the court issued an Order granting the Motion and dismissing the case. Order, Dckt. 50.

The case having been previously dismissed and this Motion resolved, this Matter is removed from the calendar.

54. [16-23473](#)-E-13      **JOSEPHINE WILLIAMS**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Kristy Hernandez**      **12-10-18 [34]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Josephine Williams (“Debtor”), is \$5,816.85 delinquent in plan payments.

#### **DEBTOR’S NON-OPPOSITION**

Debtor filed non-opposition to Trustee’s motion on December 26, 2018. Dckt. 38.

#### **DISCUSSION**

Debtor is \$5,816.85 delinquent in plan payments, which represents multiple months of the \$1,716.86 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, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

55.    [18-24364-E-13](#)            **CLYDE HUGHES**                            **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Mark Shmorgan**                            **11-20-18 [45]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on November 20, 2018. By the court’s calculation, 50 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.

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

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

1. The debtor, Clyde Hughes (“Debtor”), is deceased, having passed away on November 6, 2018. Only \$1,950.00 of non-exempt equity appears in this case; and
2. Debtor is delinquent \$250.00 in plan payments.

## DISCUSSION

In a Chapter 13 case where the debtor has died or become incompetent, the case may be dismissed, or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. FED. R. BANKR. P. 1016.

Here, Debtor was receiving only retirement income. Schedule I, Dckt. 1. Debtor’s Schedules do not reflect an expense for a life insurance policy. Schedule J, Dckt. 1. There is no indication Debtor will continue to receive funds from any source now that he is deceased.

Debtor’s residence, commonly known as 230 West Main Street, Rio Linda had value of \$323,663.00. Schedule A, Dckt. 1. Creditor Champion Mortgage Company dba Nationstar Mortgage, LLC held a deed of trust securing a claim in the amount of \$232,469.22. Schedule D, Dckt. 1. Pursuant to C.C.P. section 704.730, Debtor claimed an exemption in his residence in the amount of \$175,000.00. Therefore, no equity existed in Debtor’s residence.

Trustee estimates that Debtor’s overall non-exempt assets total \$1,950.00. No longer having a source of income and having *de minimis* nonexempt assets, further administration of this case is not in the interest of the parties and the motion to dismiss is granted.

Additionally, Debtor is \$250.00 delinquent in plan payments, which represents slightly less than one month of the \$260.00 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). This is separate grounds for dismissal of 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 The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. [17-24965](#)-E-13      **DAT/KAMYIN LUONG**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Mikalah Liviakis**      **12-11-18 [46]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Dat Hon Luong and Kamyin Cheung Luong (“Debtor”), are \$2,000.00 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$2,000.00 delinquent in plan payments, which represents multiple months of the \$999.00 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 file a response or opposition to Trustee’s Motion.

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

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

57.	<a href="#"><u>18-23365</u></a> -E-13 <a href="#"><u>DPC-2</u></a>	TENA ROBINSON Jason Borg	<b>MOTION TO DISMISS CASE</b> 12-11-18 [ <a href="#"><u>110</u></a> ]
-----	---	-----------------------------	--

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Abel Ram Rusfeldt ("Debtor"), is \$7,715.16 delinquent in plan payments.

## DISCUSSION

Debtor is \$7,715.16 delinquent in plan payments, which represents multiple months of the \$4,328.88 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 file a response or opposition.

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

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

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

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

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

59. [17-27168-E-13](#)      **ERIC/SAXON JOHNSON**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mikalah Liviakis**      **12-10-18 [17]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

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

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

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Eric Damon Johnson and Saxon Salena Johnson (“Debtor”), are \$1,946.01 delinquent in plan payments.

## DISCUSSION

Debtor is \$1,946.01 delinquent in plan payments, which represents multiple months of the \$650.00 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 file a response or opposition to the Trustee's Motion.

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

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

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

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

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

60.	<a href="#"><u>18-27160</u></a> -E-13	<b>CLAUDIA/EDWARD JENKINS</b> <b>Peter Macaluso</b>	<b>ORDER TO SHOW CAUSE - FAILURE TO PAY FEES</b> <b>12-19-18 [21]</b>
-----	---------------------------------------	--	--

**Final Ruling:** No appearance at the January 9, 2019, 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 December 21, 2018. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on December 14, 2018.

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

The court's docket reflects that the default in payment that is the subsection 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.

61. [17-23662-E-13](#)      **JOSE ESPINO AND MICHEL**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **REYES**                      **12-12-18 [75]**  
                                    **Thomas Gillis**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on , Dckt. 88; 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 Jose Espino and Michel Reyes (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 88, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

62. [14-20160-E-13](#) KIM SCOTT MOTION TO DISMISS CASE  
[DPC-5](#) Candace Brooks 12-10-18 [\[86\]](#)

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

**January 9, 2019 at 10:00 a.m.**  
**- Page 91 of 131 -**

63. [18-23157](#)-E-13 SUANNE BLEDSOE MOTION TO DISMISS CASE  
[DPC-1](#) Mikalah Liviakis 12-10-18 [15]

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<b>The Motion to Dismiss is granted, and the case is dismissed.</b>
---

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Suanne Lynette Bledsoe (“Debtor”), is \$1,568.00 delinquent in plan payments.

## DISCUSSION

Debtor is \$393.00 delinquent in plan payments, which represents multiple months of the \$393.00 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 file a response or opposition to the Trustee’s Motion.

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

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

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

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

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

64. [14-20150-E-13](#)      **MICHAEL/DEBORAH SOUZA**      **MOTION TO DISMISS CASE**  
[DPC-2](#)                      **Diana Cavanaugh**                      **12-10-18 [75]**

**WITHDRAWN BY M.P.**

Final Ruling: No appearance at the January 9, 2019, hearing is required.  
-----

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

65. [16-20250-E-13](#)      **INES/ANGELINA MORENO**      **MOTION TO DISMISS CASE**  
[DPC-3](#)                      **Bruce Dwiggin**                      **12-10-18 [60]**

**WITHDRAWN BY M.P.**

Final Ruling: No appearance at the January 9, 2019, hearing is required.  
-----

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 20, 2018, Dckt. 44; 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 Lee Ann Newton (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 44, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Elvira Ochoa Lopez and Jose Fierros Lopez (“Debtor”), is \$12,560.24 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$12,560.24 delinquent in plan payments, which represents multiple months of the \$4,241.31 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 file a response or opposition to the Trustee’s Motion.

Based on the foregoing, 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

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

68.	<a href="#"><u>16-26349</u></a> -E-13 <a href="#"><u>DPC-3</u></a>	RICARDO VEGA Peter Macaluso	MOTION TO DISMISS CASE 12-10-18 [ <a href="#"><u>91</u></a> ]
-----	---	--------------------------------	--

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

69. 17-27449-E-13      **BONITA MELENDEZ**      **MOTION TO DISMISS CASE**  
DPC-4      **Rick Morin**      **12-11-18 [84]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

**January 9, 2019 at 10:00 a.m.**  
**- Page 96 of 131 -**



70. [14-23440](#)-E-13      **TOSHIBA FRANCOIS**      **MOTION TO DISMISS CASE**  
[DPC-4](#)      **Peter Macaluso**      **12-7-18 [88]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

71. [18-26341](#)-E-13      **TIMOTHY MUNN**      **ORDER TO SHOW CAUSE - FAILURE**  
      **Riachard Jare**      **TO PAY FEES**  
      **12-14-18 [19]**

**Final Ruling:** No appearance at the January 9, 2019, 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 December 16, 2018. The court computes that 24 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on December 10, 2018.

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

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.

72. [15-28042-E-13](#) **ALYCIA LARSON** **MOTION TO DISMISS CASE**  
[DPC-6](#) **Bruce Dwiggin** **12-10-18 [55]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Alycia Nicole Larson ("Debtor") is \$2,492.86 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$2,492.86 delinquent in plan payments, which represents multiple months of the \$1,318.82 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 file a response or opposition to the Trustee's Motion.

Based on the foregoing, 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:



74. [15-26944-E-13](#)      **SHAWN SANFORD**      **MOTION TO DISMISS CASE**  
[DPC-2](#)      **Steven Alpert**      **12-10-18 [53]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Shawn Marie Sanford (“Debtor”), is \$4,057.33 delinquent in plan payments.

#### **DISCUSSION**

Debtor is \$4,057.33 delinquent in plan payments, which represents multiple months of the \$1,371.61 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 file a response or opposition to the Trustee’s Motion.

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

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

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

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

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

75.    [18-22520-E-13](#)      **TINA OLDWEILER**      **MOTION TO DISMISS CASE**  
         [DPC-2](#)                **Seth Hanson**                **12-11-18 [29]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Tina Louise Oldweiler (“Debtor”), is \$2,875.99 delinquent in plan payments.

## DISCUSSION

Debtor is \$2,875.99 delinquent in plan payments, which represents slightly more than one month of the \$1,882.32 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

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

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

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

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

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, John Tavera (“Debtor”), is \$4,058.52 delinquent in plan payments.

## **DISCUSSION**

Debtor is \$4,058.52 delinquent in plan payments, which represents multiple months of the \$2,011.03 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

Based on the foregoing, 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:





**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 14, 2018. By the court's calculation, 56 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.

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. The debtor, Stefan Polansky ("Debtor"), is delinquent \$2,109.16 in plan payments, and
2. Debtor failed to appear at the Meeting of Creditors held October 11, 2018 and November 8, 2018.

## **DISCUSSION**

Debtor is \$2,109.16 delinquent in plan payments, having paid \$0.00 into the plan to date. 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 appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

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

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

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

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

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

79.	<a href="#"><u>14-23523</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	ASHOK CHAND Alexander Lubarsky	MOTION TO DISMISS CASE 12-7-18 <a href="#"><u>[57]</u></a>
-----	---	-----------------------------------	---

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

80. [14-29505](#)-E-13      **JOHN/CAROLIN FUNDERBURG**      **MOTION TO DISMISS CASE**  
[DPC-3](#)      **Diana Cavanugh**      **12-7-18 [165]**

**WITHDRAWN BY M.P.**

Final Ruling: No appearance at the January 9, 2019, hearing is required.  
-----

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

81. [16-20005](#)-E-13      **BEVERLY BAUER**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mary Ellen Terranella**      **12-10-18 [112]**

Final Ruling: No appearance at the January 9, 2019, hearing is required.  
-----

<p><b>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</b></p>
--

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 28, 2018, Dckt. 125; 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 Beverly Joe Bauer (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 125, and upon review of the pleadings, evidence, arguments of counsel, and good

cause appearing,

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

82. [18-26305-E-13](#)      **CARMELITA BARNEY**      **MOTION TO DISMISS CASE**  
[DPC-1](#)      **Mikalah Liviakis**      **12-7-18 [15]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Carmelita Teresa Barney ("Debtor"), is delinquent \$325.00 in plan payments.

## **DISCUSSION**

Debtor is \$325.00 delinquent in plan payments, having paid \$0.00 into the plan to date. 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, cause exists to dismiss this case. The Motion is granted, and the case

is dismissed.

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

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

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

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 11, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Misty Mary Moore (“Debtor”) is delinquent \$9,657.27 in plan payments.

#### **DISCUSSION**

Debtor is \$9,657.27 delinquent in plan payments, which represents multiple months of the \$4,653.54 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition to the Motion.

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

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

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

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

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

84.	<a href="#"><u>15-29508</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	CAROLYN GREEN Steven Alpert	MOTION TO DISMISS CASE 12-10-18 <a href="#"><u>[29]</u></a>
-----	---	--------------------------------	--

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

85. [18-25412](#)-E-13      APRIL TURNBULL  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-1-18 [28]**

**DEBTOR DISMISSED: 11/15/2018**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 3, 2018. The court computes that 67 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to installment fees.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on November 15, 2018 (Dckt. 34), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.



**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on January 2, 2019, Dckt. 63; 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 Damion Alexander Hribik (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 63, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

87. [18-25114](#)-E-13      **DAVID HOWERTON**  
**Peter Macaluso**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
11-19-18 [\[27\]](#)

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 21, 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: \$77.00 due on November 13, 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.

88. [17-25215-E-13](#)      ENRIQUE GARCIA      MOTION TO DISMISS CASE  
[DPC-3](#)      Mary Ellen Terranella      12-10-18 [60]

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 28, 2018, Dckt. 67; 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 Enrique Garcia (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 67, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

89. [18-26615](#)-E-13 AFLINBA NNOWALUE  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
11-26-18 [\[21\]](#)

**DEBTOR DISMISSED: 11/27/2018**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on November 28, 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 filing fees.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on November 27, 2018 (Dckt. 22), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Rupert Fontelera Arenas and Josefina Pineda Arenas ("Debtor"), are \$9,350.00

## **DISCUSSION**

Debtor is \$9,350.00 delinquent in plan payments, which represents multiple months of the \$4,675.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor did not file a response or opposition to Trustee's Motion.

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

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

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

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

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

91. [18-24026](#)-E-13 MICHELLE LUND  
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**10-31-18 [47]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 2, 2018. The court computes that 68 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: \$54.00 due on October 26, 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.

92. [18-25226](#)-E-13      **RONALD GREGORY**  
**Justin Kuney**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**11-26-18 [41]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 28, 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 November 19, 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.

93. [16-22028-E-13](#) JENNIFER LINK  
[DPC-1](#) Seth Hanson

MOTION TO DISMISS CASE  
12-10-18 [\[16\]](#)

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on December 21, 2018, Dckt. 20; 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 Jennifer Wooster Link (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 20, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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



**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Megan Marie Carr ("Debtor"), is \$1,170.00 delinquent in plan payments.

#### DISCUSSION

Debtor is \$1,170.00 delinquent in plan payments, which represents multiple months of the \$390.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

Based on the foregoing, 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

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

95.	<a href="#"><u>18-22034</u></a> -E-13 <a href="#"><u>DPC-1</u></a>	JOSEPH PETERSON Catherine King	MOTION TO DISMISS CASE 12-11-18 [ <a href="#"><u>19</u></a> ]
-----	---	-----------------------------------	--

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Joseph Everett Peterson (“Debtor”), is \$5,486.25 delinquent in plan payments.

## DISCUSSION

Debtor is \$5,486.25 delinquent in plan payments, which represents multiple months of the

\$1,820.75 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

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

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

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

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

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

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

<p><b>The Motion to Dismiss is granted, and the case is dismissed.</b></p>
--

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtor, Michelle D. Tanner (“Debtor”), is \$456.00 in plan payments.

#### **DISCUSSION**

Debtor is \$456.00 delinquent in plan payments, which represents multiple months of the \$228.00 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 filed a non-opposition to the Motion on December 21, 2018. Dckt. 40.

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

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

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

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

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

97.    [17-27338](#)-E-13        **MARIETTA DECLARADOR**        **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Mohammad Mokarram**            **12-7-18 [34]**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

98.    [18-24438](#)-E-13        **JAMES CASEY**                    **MOTION TO DISMISS CASE**  
         [DPC-2](#)                    **Paul Bains**                    **12-7-18 [34]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.  
-----

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

99. [18-27039](#)-E-13      **NADIA KOSTYUK**  
**Julia Young**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
**12-18-18 [77]**

**Final Ruling:** No appearance at the January 9, 2019, 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 December 20, 2018. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on December 13, 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.

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

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

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Angela Martin Seibert ("Debtor") is \$2,889.70 delinquent in plan payments.

## DISCUSSION

Debtor is \$2,889.70 delinquent in plan payments, which represents slightly more than one month of the \$2,790.92 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition to Trustee's Motion.

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

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

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

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

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



101. [18-23746](#)-E-13  
[DPC-1](#)

JOSELITO/GINA SANTOS  
Chad Johnson

CONTINUED MOTION TO DISMISS  
CASE  
9-12-18 [17]

**Final Ruling:** No appearance at the hearing is required.  
-----

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

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

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

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

David Cusick ("the Chapter 13 Trustee") argues that Joselito and Gina Santos ("Debtors") did not commence making plan payments and are \$6,482.94 delinquent in plan payments, which represents two months of the \$3,241.47 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

#### **OCTOBER 10, 2018 HEARING**

At the October 10, 2018 hearing, the continued the case to January 9, 2019. Dckt. 33.

#### **RULING**

Debtor has not made any payments under the proposed plan. Since the last hearing, no modified plan has been filed, and no supplemental pleadings indicate payments have been made. 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.

102.	<a href="#"><u>17-28248-E-13</u></a> <a href="#"><u>DPC-2</u></a>	SHAUN TAYLOR Thomas Amberg	<b>MOTION TO DISMISS CASE</b> 12-11-18 <a href="#"><u>[48]</u></a>
------	--	-------------------------------	---

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

103. [15-25401](#)-E-13  
[DPC-2](#)

MICHAEL KYALWAZI  
Mark Shmorgan

MOTION TO DISMISS CASE  
12-7-18 [\[93\]](#)

**Final Ruling:** No appearance at the January 9, 2019, hearing is required.

-----

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

David Cusick (“the Chapter 13 Trustee”) having filed a Supplemental Ex Parte Motion to Dismiss the pending Motion on December 17, 2018, Dckt. 100; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the Response filed by Michael Kyalwazi (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 100, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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