

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 18, 2017, at 10:00 a.m.

1.	<u>13-31600</u> -E-13 DPC-1	MICHAEL ELLIS Gerald Glazer	MOTION TO DISMISS CASE 12-14-16 <u>20</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 13, 2017, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

January 18, 2017, at 10:00 a.m.

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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 29 & 31. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

3. [14-32002-E-13](#) **KAO SAECHAO AND MYHANH** **MOTION TO DISMISS CASE**
DPC-1 **NGUYEN** **12-13-16 [43]**
 Matthew DeCaminada

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.

Correct 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 13, 2017. By the court's calculation, 36 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,225.00 delinquent in plan payments (with another \$1,705.00 coming due before the hearing), which represents multiple months of the \$1,705.00 plan payment. 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 Opposition on December 27, 2016. Dckt. 47. Debtor promises to be current by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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 having 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. [15-25102](#)-E-13 **LARRY/ROSEMARY CALKINS** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **12-21-16 [68]**

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

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

Correct 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 21, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Larry Calkins and Rosemary Calkins ("Debtor") are \$2,275.00 delinquent in plan payments, which represents one month of the \$2,275.00 plan payment. 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 Plan will complete in more than the permitted sixty months. According to the Trustee, the Plan will complete in sixty-four months. Debtor failed to increase the plan payment from \$1,099.98 to \$1,305.76 effective June 2016 therefore violating § 2.08(b)(4)(I). The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

DEBTOR'S OPPOSITION

Debtor filed on Opposition on January 3, 2017. Dckt. 72. Debtor promises to file a modified plan by the hearing. Unfortunately for the Debtor, review of the docket shows that no modified plan has been filed.

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

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

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

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

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

5. [16-20602-E-13](#) **THOMAS/SHANNON SHUMATE** **MOTION TO DISMISS CASE**
DPC-2 **Scott Hughes** **12-14-16 [52]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,475.00 delinquent in plan payments (with another \$3,120.00 coming due before the hearing), which represents multiple months of the \$3,120.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

6. [15-29404-E-13](#) **TAEVONA MONTGOMERY** **MOTION TO DISMISS CASE**
 DPC-3 **Richard Jare** **12-14-16 [119]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 22, 2017.</p>

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckt. 126. 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 the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Debtor and her counsel appear to be working to prosecute this case. At a recent hearing there appeared to be a communication issue, which hopefully they have now resolved. The court continues the hearing to allow Debtor and counsel to prosecute this case and the pending motion to confirm a plan.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 22, 2017.

7. [12-37606-E-13](#) **SCOTT WILLIAMS** **MOTION TO DISMISS CASE**
DPC-2 **Sally Gonzales** **12-13-16 [51]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct 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 13, 2016. By the court's calculation, 36 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,568.00 delinquent in plan payments (with another \$669.00 coming due before the hearing), which represents multiple months of the \$669.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

8. [13-31706-E-13](#) **RUDOLPH JUGOZ** **MOTION TO DISMISS CASE**
DPC-6 **Matthew DeCaminada** **12-14-16 [141]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

The Motion is dismissed without prejudice, and this case shall proceed in this court.

David Cusick, the Chapter 13 Trustee, filed an Ex Parte Motion to Dismiss this Motion on December 20, 2016. Dckt. 145. The Trustee states that Rudolph Jugoz (“Debtor”) is delinquent by \$58,000.00. Nevertheless, the court approved a sale of Debtor’s real property that generated \$75,000.00 in disbursements to the Trustee. Debtor stated that he would file a modified plan to pay a 100% dividend to unsecured claims, but the Trustee notes that one has not been filed.

Regardless, the Trustee wishes to dismiss the Motion because the funds being held by the Trustee “should pay off Debtor’s case.”

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 145, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

9. [16-27906-E-13](#) **ALBERT MARTIN** **MOTION TO DISMISS CASE**
DPC-1 **Dale Orthner** **1-4-17 [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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 4, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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 Trustee argues that the Debtor did not commence making plan payments and is \$3,103.00 delinquent in plan payments, which represents one month of the \$3,103.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

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

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

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

10.	<u>16-21607-E-7</u> DPC-2	NICOLE HARRISON Mohammad Mokarram	MOTION TO DISMISS CASE 12-14-16 <u>[45]</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is denied without prejudice as moot.</p>
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The Trustee seeks to dismiss Debtor's Chapter 13 case. The Debtor filed a Notice of Conversion on January 5, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 49. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984).

Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on January 5, 2017. *McFadden*, 37 B.R. at 521.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 as moot.

11.	<u>16-21008-E-13</u> DPC-2	DEBRA MILLER Scott Hughes	MOTION TO DISMISS CASE 12-14-16 <u>[27]</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,368.00 delinquent in plan payments (with another \$1,456.00 coming due before the hearing), which represents multiple months

of the \$1,456.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

12.	<u>16-27508</u> -E-13	TARILYN ELLIOTT	MOTION TO DISMISS CASE
	DPC-2	Marc Carpenter	12-28-16 <u>[37]</u>

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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.**

13. [16-25610](#)-E-13 **PAUL FERNANDES**
Kristy Hernandez

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
12-28-16 [53]

Final Ruling: No appearance at the January 18, 2017 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 30, 2016. 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 23, 2016.

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

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.

Correct 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 21, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee argues that Kenneth Thompson and Kristine Thompson ("Debtor") are in material default under the Plan because Debtor's Plan does not provide for the priority claims of the Employment Development Department in the total amount of \$3,467.17. Section 2.13 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 3, 2017. Dckt. 147. Debtor states that a modified plan will be filed and served before the hearing on this Motion. Unfortunately for the Debtor, no modified plan has been proposed to the court.

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 having 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. [16-27113](#)-E-13 **IRENE ESPIRITU**
Pro Se

MOTION TO DISMISS CASE
12-14-16 [25]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee alleges that the 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).

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

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

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

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

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

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

16. [16-27113](#)-E-13 **IRENE ESPIRITU**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-30-16 [\[34\]](#)**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 1, 2017. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 27, 2016.

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.

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 2, 2016. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on November 28, 2016.

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

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

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

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.

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 59 & 62. 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 the 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 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Trustee seeks dismissal of the case on the basis that John Monroe ("Debtor") is \$7,000.00 delinquent in plan payments (with another \$5,000.00 coming due before the hearing), which represents multiple months of the \$5,000.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on January 4, 2017. Dckt. 51. Debtor asserts that a payment of \$6,000.00 was made on December 30, 2016. Debtor fell behind on payments after his "sick pay" was delayed several weeks by administrative issues with the check issuer.

Debtor expects to make another payment of \$6,000.00 on January 10, 2017, which would bring him current by the hearing. While Debtor has provided evidence of \$6,000.00 being paid on December 30, 2016, Debtor has not filed any supplemental pleadings showing that the remaining delinquency has been cured.

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

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

20. [16-24717-E-13](#) **GEORGE ALM** **CONTINUED MOTION TO DISMISS**
DPC-2 **Robert Huckaby** **CASE**
10-14-16 [29]

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on December 21, 2016, Dckt. 58; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 58, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

Correct 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 21, 2016. 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). The 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 Trustee argues that Kathy Coard ("Debtor") is in material default under the Plan because Debtor has not increased her plan payments in accordance with a notice of payment change from a Class 1 creditor. A Notice of Mortgage Payment Change was filed on April 16, 2016, that increased the monthly contract installment from \$1,423.08 to \$2,731.00 effective as of June 2016. Debtor should have increased her plan payments from \$1,398.84 to \$3,855.20 in June 2016. Section 2.08(b)(4)(I) of the Plan makes that failure a breach of the Plan. Failure to adjust plan payments according to a proper notice of payment change puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 71. Debtor explains that she has a second job now and will be able to propose a modified plan by January 7, 2017, with increased plan payments. Unfortunately for the Debtor, a review of the docket shows that no modified plan has been filed with the court.

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

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

22. **13-22820-E-13** **KATHLEEN SINDELAR** **MOTION TO DISMISS CASE**
 DPC-2 **Eric Schwab** **12-20-16 [\[87\]](#)**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 20, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that Kathleen Sindelar ("Debtor") is \$2,100.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Additionally, Debtor filed two claim objections previously that were denied without prejudice. Even if those objections are filed again and are prosecuted successfully, there would be insufficient funds available to the remaining claims an 11% dividend as called for by the Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on January 4, 2017. Dckt. 91. Debtor states that she does not intend to refile the claim objections because she is having difficulty obtaining documentation from 1994 through 2000 relating to the claims that were allegedly the sole debts of Debtor's former spouse. Debtor states that she will file a modified plan to be set for hearing on February 14, 2017. Unfortunately for the Debtor, a review of the docket shows that no modified plan and corresponding motion to confirm have been filed with the court.

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

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

23. [15-25720](#)-E-13 **STEPHANIE BRECKENRIDGE** **MOTION TO DISMISS CASE**
DPC-1 **Matthew DeCaminada** **12-14-16 [39]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Stephanie Breckenridge (“Debtor”) has filed an Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 45& 47. 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 the 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 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.

24. [16-27420](#)-E-13 **JUDITH DARNOLD** **MOTION TO DISMISS CASE**
DPC-2 **Steele Lanphier** **12-28-16 [22]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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.**

25. [16-24223](#)-E-13 **JANACE LIPPI** **ORDER TO SHOW CAUSE - FAILURE**
 Michael Benavides **TO PAY FEES**
 11-2-16 [31]

Final Ruling: No appearance at the January 18, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 4, 2016. The court computes that 75 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 28, 2016.

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

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

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

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

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

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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 21, 2016.

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

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 case shall proceed in this court.

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 16, 2016. By the court's calculation, 63 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). The Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Trustee argues that the Debtor did not commence making plan payments and is \$995.00 delinquent in plan payments, which represents one month of the \$995.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting all required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

**The Trustee Shall Address at the Hearing Service of the Pleadings
on Julius Engel as Counsel for Debtor as of December 14, 2016**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,570.20 delinquent in plan payments (with another \$545.71 coming due before the hearing), which represents multiple months of the \$545.71 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

CASE DISMISSED: 11/19/2016

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 22, 2016. By the court's calculation, 51 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on August 22, 2016. Dckt. 45. The Trustee seeks dismissal due to the Debtor's delinquency and failure to file an Amended Plan and set it for confirmation.

DEBTOR'S OPPOSITION

Danny Rue ("Debtor") filed an opposition on September 28, 2016. Dckt. 61. The Debtor states that he will be adjusting the plan payments in the Amended Plan (Dckt. 67) so that the plan payment amount will be \$1,324.00 because a \$73,676.00 pre-petition arrears claim of American Servicing Company has been eliminated. Debtor is currently working with lender for a modification of his mortgage loan and is awaiting authorization for the trial loan modification.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 5, 2016. Dckt. 71. The Trustee states that since the case was filed on April 28, 2016, the Debtor has made only one payment (on May 27, 2016) of \$2,234.00. Debtor's mortgage servicer America's Service Co. has received one payment of \$1,946.00. The Trustee states that the amended plan is not confirmable, especially because Debtor is delinquent under it.

The Trustee notes that Debtor has filed eleven bankruptcy cases since 2008, including:

CASE NO.	DATE FILED	DISPOSITION & DATE	CHAPTER
16-22732	4/28/16	ACTIVE CASE	CHAPTER 13
14-29671	9/29/14	DISMISSED 6/29/15	CHAPTER 13
14-24181	4/23/14	DISMISSED 8/22/14	CHAPTER 13
13-33851	10/28/13	DISMISSED 4/23/14	CHAPTER 13
13-24737	4/5/13	DISMISSED 10/18/13	CHAPTER 13
13-21452	2/1/13	DISMISSED 5/20/13	CHAPTER 13
12-29177	5/11/12	DISMISSED 10/24/12	CHAPTER 13
11-43836	10/3/11	DISMISSED 4/23/12	CHAPTER 13
11-25228	5/26/11	DISCHARGED 9/27/11	CHAPTER 13 CONVERSION TO CHAPTER 7
10-25066	3/2/10	DISMISSED 3/8/11	CHAPTER 13
08-39044	12/23/08	DISMISSED 3/12/10	CHAPTER 13

The Trustee reports that the United States Trustee has filed an adversary complaint (Case No. 16-2165, Dckt. 41) that is scheduled for hearing on October 12, 2016, at 2:30 p.m. and that raises concerns about the Debtor's repeat filings. The Trustee supports the U.S. Trustee's request to prohibit Debtor from refile for bankruptcy in any district for three years without first obtaining permission from the bankruptcy court.

OCTOBER 12, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, to give the U.S. Trustee time to actively prosecute an adversary proceeding.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a Supplemental Declaration on January 4, 2017. Dckt. 89. The Trustee reports that Debtor is delinquent still. Debtor made one payment of \$2,234.00 on May 27, 2016, and has not made any payment since then. Debtor is \$3,062.00 under the terms of the last proposed plan.

The Trustee also reports that there has been a delay in confirmation because Debtor's last Motion to Confirm was denied on November 22, 2016. *See* Dckt. 88.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,062.00 delinquent in plan payments, which represents multiple months of the \$1,324.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's original Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016. A review of the docket shows that Debtor filed an Amended Plan on September 28, 2016, (Dckt. 67) that was denied at the November 22, 2016 hearing (Dckt. 86). Debtor remains delinquent under that Plan, though, which is cause to dismiss the case. *See* 11 U.S.C. § 1307(c)(1).

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

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

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

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

The dismissal of the case does not deprive this court of jurisdiction to adjudicate matters in and relating to this case, including Adversary Proceeding 16-02165.

31.	<u>16-25332</u> -E-13 DPC-2	STEPHEN/LESLEE FOURNIER Mary Ellen Terranella	CONTINUED MOTION TO DISMISS CASE 10-14-16 <u>[36]</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on December 14, 2016, Dckt. 92; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 92, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

32.	<u>12-23733</u> -E-13 DPC-8	LINDA MIDGETT Alan Honaker	MOTION TO DISMISS CASE 12-13-16 <u>91</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Former Attorney (Order on Substitution granted on December 14, 2016 (Dckt.98)), and Office of the United States Trustee on December 13, 2016. By the court's calculation, 36 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). Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. The Debtor filed a Notice of Conversion on January 11, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 99. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on January 11, 2017. *McFadden*, 37 B.R. at 521.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 as moot.

34. [16-27534](#)-E-13 **PHILLIP/REHEMA PETE** **MOTION TO DISMISS CASE**
DPC-2 Pro Se 12-21-16 [\[17\]](#)

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 21, 2016. By the court's calculation, 28 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). The Debtor, Creditors, the 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 Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

35. [16-27235](#)-E-13 CAROLYN HEUSTESS MOTION TO DISMISS CASE
DPC-2 Pro Se 12-21-16 [\[26\]](#)

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 21, 2016. By the court's calculation, 28 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). The Debtor, Creditors, the 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 Trustee alleges that Carolyn Heustess ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the 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). The Trustee believes that Debtor has no employer, but Federal Rule of Bankruptcy Procedure 4002-1(b)(2) requires Debtor provide a written statement that no such documentation exists or is not available. Failure to provide advices or other documentation is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

36.	<u>16-24337</u> -E-13 DPC-3	QUAY SAMONS Eamonn Foster	MOTION TO DISMISS CASE 12-7-16 [<u>49</u>]
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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.**

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.

Correct 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 13, 2016. By the court's calculation, 36 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). The 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 Trustee seeks dismissal of the case on the basis that Charles Leonard ("Debtor") is \$548.00 delinquent in plan payments (with another \$274.00 coming due before the hearing), which represents multiple months of the \$274.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 61. Debtor promises to be current by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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 having 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. [15-21839](#)-E-13 **ROBERT REED AND MARIA** **MOTION TO DISMISS CASE**
DPC-3 **BARTLOW-REED** **12-12-16 [102]**
Peter Macaluso

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 10, 2017, Dckt. 108; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 108, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016 (incorrectly listed as February 14, 2016). By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Trustee seeks dismissal of the case on the basis that Toshiba Francois ("Debtor") is \$620.00 delinquent in plan payments (with another \$210.00 coming due before the hearing), which represents multiple months of the \$210.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 3, 2017. Dckt. 49. Debtor promises to be current by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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 having 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.

40. [15-28741](#)-E-13 PAMELA MCGAUGHY MOTION TO DISMISS CASE
DPC-1 Thomas Amberg 12-14-16 [\[41\]](#)

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 45 & 47. 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 the 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 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.

41. [16-25741](#)-E-13 **DESIREE ARBOLEDA**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
11-3-16 [\[35\]](#)

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,123.34 delinquent in plan payments (with another \$2,123.34 coming due before the hearing), which represents one month of the \$2,123.34 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. The Debtor filed a Notice of Conversion on December 31, 2016, however, converting the case to a proceeding under Chapter 7. Dckt. 25. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 31, 2016. *McFadden*, 37 B.R. at 521.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 as moot.

44. [16-27442](#)-E-13 **KORIE MARTINEZ** **MOTION TO DISMISS CASE**
DPC-2 **Aubrey Jacobsen** **12-28-16 [37]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 5, 2017, Dckt. 43; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

Correct 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 16, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$152.00 delinquent in plan payments (with another \$152.00 coming due before the hearing), which represents one month of the \$152.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on January 3, 2017. Dckt. 121. Debtor promises to be current by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

46. [16-26743](#)-E-13 **ALVARO RODRIGUEZ**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
12-15-16 [\[33\]](#)

Final Ruling: No appearance at the January 18, 2017 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 December 17, 2016. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on December 12, 2016.

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

47. [16-26743](#)-E-13 ALVARO RODRIGUEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-15-16 [\[19\]](#)

Final Ruling: No appearance at the January 18, 2017 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 17, 2016. The court computes that 62 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 10, 2016.

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 16, 2016. By the court's calculation, 63 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). The Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

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

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

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

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

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

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

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

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

49. 16-26647-E-13 **MARTIN DUARTE** **MOTION TO DISMISS CASE**
 DPC-2 **Mark Wolff** 12-21-16 [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.

Correct 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 21, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee argues that Martin Duarte ("Debtor") did not commence making plan payments and is \$1,716.00 delinquent in plan payments (with another \$1,716.00 coming due before the hearing), which represents one month of the \$1,716.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 35. Debtor's Attorney states that he has not been in contact with Debtor since the Trustee's Motion was filed. Debtor's Attorney notes that Debtor attended a continued Meeting of Creditors on December 8, 2016, which was continued to February 16, 2017, to allow Debtor to file income tax returns. Debtor's Attorney requests that the hearing on this Motion be denied or continued to February 28, 2017.

Unfortunately for Debtor, the Opposition does not address the Trustee's ground to dismiss for delinquency. A delinquency is outstanding in this case, with Debtor having not made a single payment yet. Delinquency is cause to dismiss a case.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

50. [15-22449-E-13](#) **LUCIANO/MAGELIN VENTURA** **MOTION TO DISMISS CASE**
 DPC-3 **Mark Wolff** **12-13-16 [71]**

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

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

Correct 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 13, 2016. By the court's calculation, 36 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). The 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 Trustee seeks dismissal of the case on the basis that Luciano Ventura and Magelin Ventura ("Debtor") are \$4,327.50 delinquent in plan payments (with another \$3,011.00 coming due before the hearing), which represents multiple months of the \$3,011.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 75. Debtor states that some payments have been made to the Chapter 13 Trustee, and Debtor is attempting to cure the remaining arrearages with paychecks received and to be received on January 6 and 20, 2017. While the court appreciates that Debtor has made efforts to become current, Debtor is delinquent nevertheless. A promise to pay is not evidence of such.

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

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

**APPEARANCE OF ARMANDO RODRIGUEZ, DEBTOR (*PRO SE*),
REQUIRED AT THE JANUARY 18, 2017 HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

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

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

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

Correct Notice Not Provided. No Proof of Service or Notice of Hearing has been filed. Nevertheless, the court reviewed the Motion and issued an Interim Order on December 27, 2016. Dckt. 16. The court required service and notice by December 31, 2016. Dckt. 16.

The Motion to Extend the Automatic Stay was set for hearing pursuant to the court's Interim Order. The Debtor, Creditors, the 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 Extend the Automatic Stay is denied.

On December 6, 2016, Armando Rodriguez ("Debtor") commenced this Chapter 13 Case. Debtor has had pending and dismissed another bankruptcy case within the one-year period preceding the commenced of the current case. That prior case, Bankr. E.D. Cal. No. 16-24340, ("Prior Case") was filed on July 1, 2016, and dismissed on September 9, 2016. The Prior Case was dismissed due to Debtor's failure to pay his filing fee installments. 16-24340; Civil Minutes, Dckt. 27, and Order, Dckt. 39. At the time the Prior Case was dismissed, the Chapter 13 Trustee had pending a motion to dismiss the Prior Case due to the Debtor failing to make any proposed plan payments (which were \$4,250.00 a month) to the Trustee. *Id.*; Motion, Dckt. 33.

In the current case, Debtor has filed a Motion to Extend the Automatic Stay. As provided in 11 U.S.C. § 362(c)(3)(A), if a prior bankruptcy case was pending and dismissed within the one-year period prior to the commencement of the second case then before the court, the automatic stay terminates thirty days after the commencement of the second case if the court has not ordered the stay to be extended.

In the Motion to Extend the Automatic Stay, Dckt. 15, Debtor asserts that this is his second bankruptcy case, but does not clearly indicate why he could not perform the prior case and what has changed. In the Motion he does states, “I am also asking J.P. Morgan for my 401k take out to put down on my bankruptcy.” *Id.* This appears to be an indication that Debtor intends to fund his bankruptcy plan with his 401k monies. No declaration or other evidence is provided in support of the Motion to Extend the Automatic Stay.

**Review of Schedules, Statement of Financial Affairs,
and Proposed Chapter 13 Plan**

Debtor has filed his Schedules, Statement of Financial Affairs, and a Proposed Chapter 13 Plan in the current bankruptcy case. The proposed Chapter 13 Plan requires monthly plan payments of \$4,100.00 for a period of sixty months. Dckt. 9. The proposed Plan as drafted provides for the following treatment of claims:

- A. Class 1 Secured Claims.....No Plan Distributions.
- B. Class 2 Modified Secured Claims.....No Plan Distributions.
- C. Class 3 Surrender of Collateral Claims.....None.
- D. Class 4 Secured Claims to be Paid Directly.....None.
- E. Class 5 Priority Unsecured Claims.....No Plan Distributions.
- F. Class 6 Special Treatment Unsecured Claims.....None.
- G. Class 7 General Unsecured Claims.....0.00% Dividend for estimated \$4,980.00 in general unsecured claims.

On its face, the proposed Chapter 13 Plan will be funded with \$246,000.00 and no distributions will be made of those monies through the Plan, except for \$4,980.00 to creditors holding general unsecured claims.

Review of Schedules

On Schedule A/B Debtor lists owning real property stated to be 2519 Woodgate Way, Roseville, California which has a value of \$480,000.00. Dckt. 1 at 11. Debtor lists a JP Morgan 401(k) account with a \$150,000 value on Schedule A/B Question 21. *Id.* at 16. This asset is claimed as exempt on Schedule C. *Id.* at 22.

For creditor claims, Debtor lists “Bank of America” as having a claim in the amount of (\$557,000) secured by the Roseville property with a value of \$480,000. Schedule D, *Id.* at 23. A \$15,000.00 secured claim of JP Morgan is also listed, with the collateral being Debtor’s 401(k) asset.

For income, Debtor and non-debtor spouse list \$8,420 take-home income after Debtor’s taxes and other withholding. *Id.* at 37. On Schedule J Debtor lists having \$3,250.00 in Monthly Net Income after payment of expenses. *Id.* at 39-40. The expenses do not include a mortgage payment, property insurance, or property taxes.

Based on Schedules I and J, Debtor appears not to have sufficient monies to fund a \$4,100.00 monthly plan payment. Whether a \$4,100.00 a month plan payment is necessary cannot be determined in light of the proposed Chapter 13 Plan that does not provide for the disbursement of any monies, other than to pay the \$4,980 of general unsecured claims.

**Determination of Whether Automatic Stay
Should be Extended Pursuant to 11 U.S.C. § 362(c)(3)(B)**

Upon motion of a party in interest and after notice and hearing, the court may order the automatic stay extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor’s cases were 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). 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.

Here, from the information provided, the court cannot make such determination in favor of the Debtor. In the Prior Case, Bank of American, N.A. filed Proof of Claim No. 4 in which it asserted a secured claim in the amount of \$571,465.73. Of this, in Proof of Claim No. 4 in the Prior Case Bank of America, N.A. further asserted that the pre-petition arrearage due the creditor was \$216,767.20. The monthly mortgage payment is stated in Proof of Claim No. 4 to be \$2,852.20 a month. If the \$216,767.20 arrearage is spread over sixty months, which would be \$3,613 a month in addition to the \$2852.20 current monthly mortgage payment.

Filing of Other Bankruptcy Cases Involving
2419 Woodgate Way, Roseville, California

On Schedule H Debtor states that he has “codebtors,” but does not identify the “codebtors” on Schedule H. Dckt. 14 at 22. On Schedule J Debtor lists his non-filing spouse as having income and lists on Schedule J one of his dependants as “wife.” *Id.* at 26. Debtor confirms on the Statement of Financial Affairs (Part 1, Questions 1 and 2) that he is married and that he lives at 2519 Woodgate Way, Roseville, California. *Id.* at 29. A Waiver of Exemptions has been filed in which Debtor’s spouse is identified as “Rose Rodriguez.” Dckt. 7. On Proof of Claim No. 4 filed in the Prior Case by Bank of America, N.A., the promissory note attached to that Proof of Claim identifies the borrowers as “Armando Rodriguez” and “Rose P. Rodriguez.”

A review of the court’s files discloses that “Rose Pauline Rodriguez” who lists her address as 2519 Woodgate Way, Roseville, California has filed the following cases in this District:

A. Chapter 13 Case 16-20567

1. Filed (In Pro Se).....February 2, 2016
2. Dismissed.....April 3, 2016
 - a. Grounds for Dismissal were:
 - (1) Rose Rodriguez failed to attend First Meeting of Creditors;
 - (2) Rose Rodriguez failed to complete her mandatory credit counseling course;
 - (3) Rose Rodriguez failed to provide the Chapter 13 trustee with tax returns; and
 - (4) Rose Rodriguez failed to provide the Chapter 13 trustee with evidence of income. 16-20567; Civil Minutes, Dckt. 51.

B. Chapter 13 Case 15-28538

1. Filed (In Pro Se).....November 2, 2015
2. Dismissed.....January 21, 2016
 - a. Grounds for Dismissal were:
 - (1) Rose Rodriguez failed to attend First Meeting of Creditors;
 - (2) Rose Rodriguez failed to pay the filing fee installment which had come due;

- (3) Rose Rodriguez failed to provide the Chapter 13 trustee with tax returns;
- (4) Rose Rodriguez failed to disclose her filing of five prior bankruptcy cases since 2011; and
- (5) Rose Rodriguez failed to provide the Chapter 13 trustee with evidence of income. 15-28538; Civil Minutes, Dckt. 37.

C. Chapter 13 Case 15-26202

- 1. Filed (In Pro Se).....August 4, 2015
- 2. Dismissed.....October 15, 2016

a. Grounds for Dismissal were:

- (1) Rose Rodriguez failed to attend First Meeting of Creditors;
- (2) Rose Rodriguez failed to pay the filing fee installment which had come due;
- (3) Rose Rodriguez failed to provide the Chapter 13 trustee with tax returns;
- (4) Rose Rodriguez failed to provide the Chapter 13 trustee with business records
- (5) Rose Rodriguez failed to disclose her filing of prior bankruptcy cases;
- (6) Rose Rodriguez failing to provide business income and expense records;
- (7) Rose Rodriguez failing to provide evidence of rental income; and
- (8) Rose Rodriguez failed to provide the Chapter 13 trustee with evidence of income. 15-26202; Civil Minutes, Dckt. 35.

D. Chapter 13 Case 14-27984

- 1. Filed (counsel represented).....August 5, 2014
- 2. Dismissed.....November 17, 2014

a. Grounds for Dismissal were:

- (1) Rose Rodriguez failed to attend First Meeting of Creditors;

- (2) Rose Rodriguez failed to commence making Chapter 13 plan payments;
- (3) Rose Rodriguez failed to provide the Chapter 13 trustee with tax returns; and
- (4) Rose Rodriguez failing to provide evidence of rental income. 14-27984; Civil Minutes, Dckt. 41.

E. Chapter 13 Case 12-34894

- 1. Filed (counsel represented).....August 15, 2012
- 2. Dismissed.....November 20, 2012
 - a. Grounds for Dismissal were:

- (1) Rose Rodriguez failed to commence making Chapter 13 plan payments. 12-34894; Civil Minutes, Dckt. 33.

F. Chapter 13 Case 11-48686

- 1. Filed (counsel represented).....December 12, 2011
- 2. Dismissed.....March 26, 2012
 - a. Grounds for Dismissal were:

- (1) Rose Rodriguez failed to commence making Chapter 13 plan payments. 11-48686; Civil Minutes, Dckt. 30.

G. Chapter 13 Case 11-20656

- 1. Filed (counsel represented).....January 10, 2011
- 2. Dismissed.....October 22, 2011
 - a. Grounds for Dismissal were:

- (1) Rose Rodriguez defaulted in the Chapter 13 plan payments. 11-20656; Notice of Default, Dckt. 24, and Order, Dckt. 27.

In the above cases Armando Rodriguez appears as the spouse of Rose Rodriguez, including filing Spousal Waivers of Exemptions.

Debtor offers no explanation in light of these attempted and failed Chapter 13 cases why this case is being prosecuted in good faith.

INTERIM EXTENSION OF AUTOMATIC STAY

Due to the year end holidays, the court's ability to conduct an immediate hearing on the Motion was limited. Notwithstanding the serious questions that existed in light of the information in the Plan (failure to provide for paying any claims other than nominal general unsecured claims) and the Schedules, the court:

- A. Granted the Motion and extended the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) through and including noon on January 31, 2017, at which time it will expire as to the Debtor unless further extended by the court.
- B. Ordered Debtor to:
 - 1. File supplemental pleadings and file and serve all pleadings and a notice of Hearing at 10:00 a.m. on January 18, 2017, (specially set to the court's Chapter 13 dismissal calendar that date) for the Motion to Extend the Automatic Stay on all Creditors in this case, the Chapter 13 Trustee, and the U.S. Trustee on or before December 30, 2016.
 - 2. Appear in person at the 10:00 a.m. hearing on January 18, 2017, no telephonic appearance permitted.
- C. If the Debtor fails to appear at the January 18, 2017 hearing, the court may dismiss this bankruptcy case without further notice or hearing.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on January 6, 2017. Dckt. 19. The Trustee reports that Debtor has not filed any additional documents since the court issued its interim order. No proof of service has been filed.

DISCUSSION

Debtor has chosen not to follow the court's order. Debtor does not appear to be taking any action to prosecute this case. Debtor fails to address this being yet another case in a series of bankruptcy cases filed by Debtor and his wife, which cases are not prosecuted.

Without further evidence of why the stay should be extended in this case, and without proper notice and service being provided, the court cannot grant the Motion. Debtor has failed to rebut the presumption of bad faith arising under 11 U.S.C. § 362(c)(3)(B) and (C). Therefore, the Motion is denied.

The court shall issue a minute order 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 the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to extend the automatic stay is denied, and the interim automatic stay entered by the court expires at 12:02 p.m. on January 31, 2017, pursuant to prior order of the court (Dckt. 16).

52. [12-39954-E-13](#) **JOHN/MICHELLE PINEDA** **MOTION TO DISMISS CASE**
 DPC-2 **Peter Cianchetta** **12-21-16 [83]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct 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 21, 2016. 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). The 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>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 22, 2017.</p>

The Trustee argues that John Pineda, Jr. and Michelle Pineda (“Debtor”) are in material default under the Plan because the Plan will complete in seventy months. Debtor has not increased plan payments in accordance with notices of payment change. The monthly contract installment increased from \$1,939.11 to \$2,038.99 to \$2,067.57 without the Debtor increasing plan payments. Section 2.08(b)(4)(I) of the Plan makes that failure a breach of the Plan. Failure to adjust plan payments according to a proper notice of payment change puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 87. Debtor states that an adversary proceeding has been filed against Wells Fargo Bank, N.A. One of the claims for relief is an objection to

Wells Fargo's claim. Debtor contends that Wells Fargo has issued new notices of mortgage payment change in attempts to circumvent Debtor's objection to claim while the adversary proceeding is ongoing.

Debtor asserts that the intent of Federal Rule of Bankruptcy Procedure § 3006 was to prevent the multiple filings of amendments to a Proof of Claim until the underlying objection has been resolved. Debtor argues that the Trustee should ignore any new notices of mortgage payment change until the adversary proceeding and objection to claim have been resolved.

Debtor requests that the court deny the Motion until the adversary proceeding is resolved and that the Trustee continue collecting plan payments of \$1,939.11. Alternatively, Debtor requests that the court continue the hearing on the Motion by twenty days if the court finds that Wells Fargo's demands for increased payment are appropriate.

Debtor and Wells Fargo Bank, N.A. have stipulated to the filing of a Second Amended Complaint in Adversary Proceeding 16-02002. To the extent that Debtor and the Bank cannot reach an agreement on the computation of the current mortgage payment and the Adversary Proceeding or a claim objection must be prosecuted, Debtor can file a motion to modify the plan to build in a term providing for a plan payment for this secured claim (which may have to be designated as an "adequate protection payment" so as not to be misperceived as a modification of the secured claim).

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 22, 2017.

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

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

Correct 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 18, 2016. 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 (14) 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 Trustee seeks dismissal of the case on the basis that Matthew Vickers and Ariana Vickers ("Debtor") are \$13,750.00 delinquent in plan payments (with another \$6,880.00 coming due before the hearing), which represents multiple months of the \$6,880.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee agreed to continue the case, which is three years old, to allow Debtor and counsel to try to resolve the plan issues.

For the November 16, 2016 hearing Debtor filed a late Opposition. Dckt. 123. Debtor requested that the court continue the hearing so that she can either become current or file a modified plan.

NOVEMBER 16, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, to allow Debtor to resolve issues with the Plan. Dckt. 125.

DISCUSSION

No additional pleadings have been filed since the November 16, 2016 hearing.

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 having 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.

54.	<u>15-29555</u> -E-13 DPC-1	DIANNE AKZAM Pro Se	CONTINUED MOTION TO DISMISS CASE 2-1-16 [26]
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 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). The Debtor, Creditors, the 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.

The hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 15, 2017.

JANUARY 18, 2017 HEARING

The U.S. Trustee's Adversary Proceeding relating to the repeated bankruptcy filings by Debtor is set for a pre-trial conference on May 31, 2017. The court continues the hearing on the Motion to Dismiss until after the pre-trial conference.

OCTOBER 12, 2016 HEARING

The court continued the hearing to afford the Debtor and the U.S. Trustee to address the issues in the Adversary Proceeding commenced by the U.S. Trustee relating to Debtor's filing of multiple prior bankruptcy cases that have been dismissed.

MOTION TO DISMISS

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the 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. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee further objects, stating that the petition may not be filed in good faith. The Debtor has failed to list the six (6) prior bankruptcies between 2010 and 2015 filed by the Debtor. The Debtor does not disclose this information. The failure to provide accurate and complete information is grounds to dismiss the case.

Though the Trustee points out the heretofore undisclosed prior bankruptcy filings by Debtor, there are additional related bankruptcy filings in which Debtor has participated and litigated. Those cases were filed by her brother, Jeffrey Akzam, and are:

- A. 11-25844 in *Pro Se*
 - 1. Chapter 13 Filed March 9, 2011

2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.
3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.
4. Discharge entered September 2, 2011.

B. 13-20155 in *Pro se*

1. Chapter 13 Filed January 7, 2013.
2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*
3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.
 - a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured claim and alleged violations of the automatic stay.
 - b. The court determined that abstention pursuant to 28 U.S.C. § 1334(c), the court finding that there were no issues arising under the Bankruptcy Code or in the bankruptcy case. Civil Minutes, Dckt. 85.

C. 14-30332 in *Pro Se*

1. Chapter 13 Case filed October 17, 2014
2. Case dismissed on July 8, 2015.
3. The case was dismissed due to debtor Jeffrey Akzam's failure to file an amended plan after the court denied confirmation of the proposed plan. Civil Minutes, Dckt. 83.

The six prior bankruptcy cases filed by Debtor are summarized as follows:

14-28272 <i>In Pro Se</i>	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	<p>I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan.</p> <p>II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28.</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
14-23825 <i>In Pro Se</i>	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014
	<p>I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49.</p>	
12-37369 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012
	<p>I. The case was dismissed due to Debtor failing to file Schedules, Statement of Financial Affairs, and Plan. Dckt. 21.</p> <p>II. Motion to Vacate Dismissal Order denied. Order, Dckt. 33</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
11-43187 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2011 Dismissed December 14, 2011
	<p>I. The case was dismissed for failure of Debtor to file Schedules, Statement of Financial Affairs, and Plan. Order, Dckt. 25.</p> <p>II. Case also dismissed due to Debtor failing to pay filing fees. Order, Dckt. 26.</p>	
11-20282 <i>In Pro Se</i>	Chapter 13 Case	Filed January 4, 2011 Dismissed March 18, 2011

	<p>I. Case dismissed due to Debtor's failure to attend First Meeting of Creditors and failure to file motion to confirm Chapter 13 Plan. Motion and Order, Dckts. 22, 27.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
10-45216 <i>In Pro Se</i>	Chapter 13 Case	<p>Filed September 22, 2010</p> <p>Dismissed December 16, 2010</p>
	<p>I. The bankruptcy case was dismissed due to Debtor failing to file a motion to confirm the Chapter 13 Plan and Debtor being delinquent in Plan payments. Motion and Order, Dckts. 22, 38.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	

Jeffrey Akzam and his sister, the Debtor Diane Akzam, have filed a series of coordinated Chapter 13 cases without either of them engaging in the good faith prosecution of those cases. To the extent that either of them believe they have a bona fide dispute with the lender who asserted a lien against property in which these two debtor believed they had an interest, those issues are outside of bankruptcy.

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive bankruptcy cases. 15-2247.

Clearly, the Debtor's lack of good faith prosecution of this case warrants action under 11 U.S.C. § 1307. That could be dismissal of the case or conversion to Chapter 7 to allow an independent fiduciary Chapter 7 Trustee to take possession of all property of the bankruptcy estate, liquidate all non-exempt property, and make a disbursement to creditors.

Even if the court were to dismiss this case, an issue arises whether the dismissal should be with prejudice, Debtor having repeated filed bankruptcy cases that she has failed to prosecute in good faith.

FEBRUARY 17, 2016 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on May 18, 2016. Dckt. 30.

MAY 20, 2016 HEARING

Since the continued hearing, the Debtor appeared at the Meeting of Creditors held on February 25, 2016. Additionally, the Debtor filed an Amended Petition and Schedules. Dckts. 33 and 34.

On April 8, 2016, the Debtor filed a Motion to Confirm Plan but failed to attach a proposed plan. Dckt. 38.

There is pending an Adversary Proceeding in which the U.S. Trustee seeks to obtain a Prefiling Review Order in light of the Debtor's non-productive repeat filing of bankruptcy cases.

While the Trustee's objection to confirmation raises significant issues, the court will not dismiss this case at this time.

The court continued the hearing to 10:00 a.m. on August 10, 2016.

AUGUST 10, 2016 HEARING

The Debtor filed and set for hearing a Motion to Confirm Amended Plan. Dckt. 82 and 85.

The Debtor filed amended Schedules E/F. Dckt. 86. A review of Debtor's Schedules showed the following:

A. Schedule A (Dckt. 22)

1. 802 Ohio Street
 - a. FMV.....\$240,000
 - b. Value of Debtor's Interest.....\$120,000
 - (1) Nature of Debtor's Interest..... "Homestead"

B. Schedule B (*Id.*)

1. Vehicles.....None
2. Household Goods.....\$190
3. Electronics.....\$225
4. Clothing.....\$100
5. Jewelry.....\$ 35
6. Tax Refunds.....None
7. Claims Against Third Parties
 - a. Assault Claim.....No Value Give
 - b. Rescission Claim.....On Appeal

C. Schedule D (*Id.*)

1. Secured Claims.....None

D. Amended Schedule E (Dckt. 86)

1. Priority Claim.....None

E. Amended Schedule F (*Id.*)

1. General Unsecured.....\$37,240.00
 - a. \$31,800.00 listed as FTB Claim (consistent with POC 1)
 - b. Two other proofs of claims filed.

F. Schedule I (Dckt. 22)

1. Not Employed
2. Income, "Loan".....\$100
3. Income, "Gift From Brother".....\$350
4. On Amended Schedule J Debtor states she will apply for Social Security

G. Amended Schedule J (Dckt. 34)

1. Total Expenses.....\$355
 - a. Rent/Mortgage.....\$ 0.00
 - b. Property Taxes.....\$ 0.00
 - c. Homeowner's Ins.....\$ 0.00
 - d. Home Maintenance.....\$ 0.00
 - e. Electricity/Gas.....\$120.00
 - f. Water/Sewer/Garbage.....\$100.00
 - g. Food/Housekeeping Supplies.....\$ 29.00
 - h. Clothing.....\$ 5.00
 - i. Personal Care Products.....\$ 5.00
 - j. Medical/Dental Expenses.....\$ 5.00
 - k. Transportation.....\$ 16.00
 - l. Entertainment.....\$ 0.00
 - m. Insurance.....\$ 0.00

H. Statement of Financial Affairs (*Id.*)

1. Part 2, Income
 - a. Employment or Business
 - (1) 2016 YTD.....None
 - (2) 2015.....None
 - (3) 2014.....None
 - b. Other Income

- (1) 2016 YTD.....\$4,200 (Gift from Brother)
\$1,200 (Loan)
- (2) 2015.....\$4,200 (Gift from Brother)
\$1,200 (Loan)
- (3) 2014.....\$4,200 (Gift from Brother)
\$1,500 (Loan)

2. Part 4, Legal Actions

- a. Akzam v. Sand Canyon.....On Appeal

The court has reviewed the Amended Plan, the terms of which are summarized as follows:

- A. Debtor will make \$95.00 a month Plan payments for sixty months.
- B. The Chapter 13 Trustee will be paid his fee from the monthly Plan payments, which amount the court projects to be \$6.65 (est. at 7%).
- C. Class 1 Payments Authorized.....None
- D. Class 2 Payments Authorized.....None
- E. Class 3 Surrenders Authorized.....None
- F. Class 4 Payments to be Made by Debtor.....None
- G. Class 5 Payments Authorized.....None
- H. Class 6 Payments Authorized.....None
- I. Class 7 Payments Authorized.....13% Dividend on \$37,240 in claims.

Amended Plan, Dckt. 85.

At the hearing, the court addressed the deficiencies in the prosecution of this case, as well as the apparent inability of the Debtor to prosecute the case. In light of the pending adversary proceeding by the U.S. Trustee for an order and judgment limiting the Debtor from filing further bankruptcy cases, in light of her multiple filing of prior non-productive cases which have been dismissed, the court continued the hearing on this motion. In light of the high likelihood of Debtor just filing another bankruptcy case, continuing the hearing on this motion and adjudicating these issues before another case is filed was consistent with proper

judicial management of this case, as well as providing Debtor an environment to obtain assistance in the prosecution of this case, if there is a viable Chapter 13 case to be prosecuted.

OCTOBER 12, 2016 HEARING

At the hearing, the court noted that the Adversary Proceeding is pending still and that no supplemental pleadings have been filed in relation to the instant Motion to Dismiss. The courts concerns are the same as at the August 10, 2016 hearing.

The court has spent a substantial amount of time at status conferences and hearing in this case and the U.S. Trustee's Adversary Proceeding in which she is requesting a prefilng review order due to Debtor's multiple non-productive filing of prior bankruptcy cases (in addition to bankruptcy cases filed by her brother which have been dismissed). In these discussions, it has been made clear to the court that Debtor is involved in a dispute in which she contests the right of a third-party to foreclose on real property. The filing of the bankruptcy cases by Debtor (and her brother) were to gain the benefit of the automatic stay, without any productive prosecution of the bankruptcy cases.

Debtor believes that it is not "right" that this third-party could assert that it could foreclose, the debt was not enforceable, and that the bankruptcy laws should prevent such third-party from proceeding to attempt to assert its rights and interests over Debtor's objection and litigation in the state court. The court has reviewed with the Debtor, Chapter 13 Trustee, and U.S. Trustee the basic principle that the Bankruptcy Code does not impose the automatic stay as a "free injunction" for non-bankruptcy case related litigation absent there being a good faith, productive prosecution of a bankruptcy case or reorganization. See *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

As this court discussed in *In re De la Salle*, a debtor or trustee can use the automatic stay in lieu of obtaining a preliminary injunction (Fed. R. Civ. P. 65), and posting the necessary bond, by providing an adequate protection fund. The fund, held by the Trustee or in a blocked account, is created with monthly plan payments (often in the amount of what the monthly mortgage payment would be) being paid into the fund. When the litigation is resolved, this court can then use the fund to pay for Rule 65(c) damages if it is determined that the automatic stay improperly enjoined the third-party from exercising its rights or obtaining possession of property that it was determined to own or be entitled to obtain. If the debtor or trustee wins, the fund can then be released to be disbursed through the plan.

In looking at the financial information provided by Debtor under penalty of perjury, she has no ability to fund a plan. She has no income, but receives only gifts from her brother (who has filed several bankruptcy cases) and loans. While Debtor believes that she will receive Social Security Benefits in December 2016, there is no indication that such monies will be sufficient to provide for Debtor's actual living expenses and fund a plan.

The court review of Schedule J indicates that the amounts stated therein are not credible. While purporting to own a home, Debtor has no expenses for property taxes, property insurance, or property maintenance. Debtor will spend next to nothing on clothing and allocates very little for food. It appears that

the expenses on Schedule J are made up numbers to mislead the court into believing that a plan can be funded, or to deluded the Debtor herself that bankruptcy presents a litigation option in her battle with the third-party.

While Debtor is convinced that she is right and that her adversary's position in the property dispute is without merit, that does not entitle Debtor to file bankruptcy, ignore the rights and interest in dispute, and merely mark time for five years in lieu of obtaining a preliminary injunction or stay pending appeal based on the merits of her contentions in the court which is adjudicating those issues.

In looking at the Debtor's schedules and financial information, the court cannot divine any the possible reorganization or restructure of the Debtor's finances through a good faith Chapter 13 case. This highlights the apparent misuse of the Bankruptcy Code as a "free stay pending appeal" as an end around of the appellate stay requirements.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 15, 2017.

CASE CONVERTED: 01/05/2017

Final 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on December 7, 2016. FN.1. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

FN.1. Debtor's Attorney substituted into the case as counsel of record in place of Debtor (*pro se*) on January 4, 2017. Dckt. 37.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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>The Motion to Dismiss is dismissed without prejudice.</p>

The Trustee seeks to dismiss Debtor's Chapter 13 case. The Debtor filed a Notice of Conversion on January 4, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 47. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on January 4, 2017. *McFadden*, 37 B.R. at 521.

TRUSTEE'S NOTICE OF DISMISSAL

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on January 11, 2017, Dckt. 54; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 54, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. [15-28456-E-13](#) **GREGORY BRUTUS** **MOTION TO DISMISS CASE**
DPC-4 Mark Wolff 12-14-16 [\[97\]](#)

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,256.00 delinquent in plan payments (with another \$250.00 coming due before the hearing), which represents multiple months of

the \$250.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

57.	<u>16-23056</u> -E-13 DPC-3	ANDREW KNIERIEM W. Steven Shumway	CONTINUED MOTION TO DISMISS CASE 10-18-16 [<u>75</u>]
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct 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 18, 2016. 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 (14) 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
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NOVEMBER 16, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, after Andrew Knieriem (“Debtor”) and counsel appeared and requested a continuance because of miscommunication between Debtor and his counsel. Dckt. 84.

TRUSTEE’S SUPPLEMENTAL DECLARATION

The Trustee filed a Supplemental Declaration on January 4, 2017. Dckt. 87. The Trustee reports that Debtor is delinquent by \$4,850.00. The Trustee also notes that an amended plan has not been filed and set for hearing since the last Motion to Confirm was denied on November 1, 2016. *See* Dckt. 81.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,850.00 delinquent in plan payments, which represents multiple months of the \$2,425.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 1, 2016. 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).

The court order continuing the hearing required that Oppositions, if any, to the Motion shall have been filed by January 4, 2017. Order, Dckt. 86. No Opposition has been filed.

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

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

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

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

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

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

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

Correct 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, 2016. 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). The 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 Trustee argues that the 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 18, 2016. 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'S OPPOSITION

Debtor filed an Opposition on January 2, 2017. Dckt. 64. Debtor promises to file, set, serve, and be current under an amended plan by the hearing. Unfortunately for the Debtor, a promise to perform is not evidence of such.

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 having 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. [16-27559](#)-E-13 **FRANK FERREIRA**
Marc Caraska

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-20-16 [18]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on December 22, 2016. The court computes that 27 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 15, 2016.

<p>The Order to Show Cause is sustained, and the case is dismissed.</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: \$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.

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.

Correct 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 28, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee argues that the Debtor did not commence making plan payments and is \$480.50 delinquent in plan payments, which represents one month of the \$480.50 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

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

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

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

61.	<u>14-20160-E-13</u> DPC-1	KIM SCOTT Candace Brooks	MOTION TO DISMISS CASE 12-13-16 [46]
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 10, 2017, Dckt. 53; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 53, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

62. [15-24763-E-13](#) **TITO AMARO** **MOTION TO DISMISS CASE**
DPC-4 **Matthew DeCaminada** **12-14-16 [61]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Tito Amaro ("Debtor") is \$600.00 delinquent in plan payments (with another \$200.00 coming due before the hearing), which represents multiple months of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S NON-OPPOSITION

Debtor filed a Non-Opposition on December 22, 2016. Dckt. 65. After some research to confirm his belief, Debtor's counsel alleges that the Debtor is deceased, having died on August, 12, 2016. Counsel has attempted to contact his next of kin to no avail.

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

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

63. [13-32465](#)-E-13 **JUSTIN/AMBER GAMAYO** **MOTION TO DISMISS CASE**
 DPC-2 **Mark Wolff** **12-14-16 [37]**

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$590.00 delinquent in plan payments (with another \$295.00 coming due before the hearing), which represents multiple months of the \$295.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 41. Debtor asserts that a payment of \$590.00 was made on January 3, 2017, to cure the delinquency. Debtor has attached a "Financial Summary - Case 13-32465" print-out from a website, but the Exhibit has not authenticated by a competent witness under Federal Rules of Evidence 601 & 602. *See* Exhibit A, Dckt. 42.

At the hearing, the Trustee reported that the delinquency **has / has not** been cured. Cause **exists / does not exist** to dismiss this case. The Motion is **xxxxxx**.

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

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

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

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

64.	<u>15-24065</u> -E-13	MAURICE CARR	MOTION TO DISMISS CASE
	DPC-6	Pro Se	12-14-16 [<u>115</u>]

CASE DISMISSED: 12/21/2016

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

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

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

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

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

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

The Trustee argues that this case may be filed in bad faith because the court previously denied a Motion to Extend the Automatic Stay, finding that:

The Debtor's prior bankruptcy case (No. 15-22909) was dismissed on June 27, 2016, after Debtor defaulted on plan payments, knowingly failed to disclose assets, and proposed to fund the plan with the illegal operation of an undisclosed corporation. *See* Order, Bankr. E.D. Cal. No. 15-22909, Dckt. 83, June 27, 2016.

Dckt. 31. The Trustee argues that the court should not find that the case was filed in good faith without evidence from Debtor. *See* 11 U.S.C. § 1325(a)(8).

DEBTOR'S REPLY

Debtor filed a Reply on January 4, 2017. Dckt. 45. Debtor asserts that the missing required documents were delivered on December 16, 2016.

As to the bad faith allegation, Debtor argues that the non-filing spouse is the sole owner of the business since before the marriage began. Debtor is not included in the operation of the business (except as an employee) and has no knowledge about or reason to investigate whether the company has completed all state and federal requirements. Debtor claims to have rectified issues related an Internal Revenue Service audit, filing missing documents with the Secretary of State, paying the EDD fee, and is resolving an audit by the Franchise Tax Board. Debtor asserts that normal business practice is to continue to operate during suspension, and Debtor claims to have been instructed to do just that by Paychex, Moss Adams, Boutin Jones, and H&R Block.

Debtor argues that the Trustee did not raise any issue of bad faith at the Meeting of Creditors, implying that he should not be able to do so now.

Debtor requests that the Motion be denied, or alternatively, that the court set an evidentiary hearing to allow the professionals who are more adequately informed of the business to provide evidence. Finally, Debtor states that an amended plan will be filed and served on or before the hearing for this Motion.

DISCUSSION

A review of the docket shows that no amended plan and corresponding motion with declarations has been filed with the court.

At the hearing, the Trustee reported that all required documents **have / have not** been filed.

The court's findings at the November 22, 2016 hearing on the Motion to Extend Stay are applicable here as well. In dismissing Debtor's prior case, the court noted that Debtor has a third case that was dismissed on July 1, 2013. The court's ruling to dismiss the prior (second) case includes the following:

"The court also notes that this is not Debtor's first bankruptcy case. She filed a Chapter 13 case (represented by the same counsel as in this case) on March 19, 2013. Bankr. E.D. Cal. 13-23661. The first bankruptcy case was dismissed on July 1, 2013, due to Debtor's failure to make any payments in that case. *Id.*; Civil Minutes, Dckt. 32.

This bankruptcy case was filed on April 9, 2015. On June 1, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, asserting that Debtor was \$9,500.00 delinquent in payments, having failed to make any payments in this case. Motion, Dckt. 30. The motion was denied without prejudice based on the Debtor having cured the default. Civil Minutes for June 24, 2016 hearing, Dckt. 40. On December 14, 2015, the Chapter 13 [Trustee] filed another motion to dismiss this case based on the Debtor being \$26,250.00 delinquent in plan payments. Motion,

Dckt. 60. Debtor's explanation as to why she was in default was the same as for the present motion, "payment delayed by political approval processes." Opposition, Dckt. 64. The court issued a conditional order of dismissal. Order, Dckt. 67. The Chapter 13 Trustee did not lodge with the court an order dismissing the case, which indicates that Debtor cured the \$26,250.00 arrearage and made the next \$10,500.00 plan payment as specified in the conditional order of dismissal.

The Trustee is back, on a third Motion to Dismiss based on a \$21,000.00 plan default. Motion, Dckt. 73. In opposition, Debtor provides her 'stock response' that it is the 'political approval process' which caused the default. Opposition, Dckt. 77. This opposition appears to be a cut and paste of the prior to [*sic*] oppositions. This identical opposition, caused by the third default strains the bounds of credibility.

...

Looking at the above [Schedule J expenses], it appears that the Debtor's defaults may be caused more by an unrealistic budget for two adults living in a \$1,150,000 home (Schedule A) and driving two older vehicles (2005 Infinity and 1998 Navigator with 304,495) which are prone to require more significant repairs than routine maintenance.

...

Status of The Simi Group, Inc.

The employer of both the Debtor and non-debtor spouse is listed as Simi Group, Inc. When the court reviewed the Secretary of State Website, the status for the corporation with the name The Simi Group, Inc., at the same address as listed on Schedule I for Debtor's and non-debtor spouse's employer, is stated to be Suspended. A LEXISNEXIS search states that the Secretary of State reports that the suspension has been in effect since November 2012. FN.1.

https://w3.lexis.com/research2/pubrec/searchpr.do?_m=037b2d115ea9a1d8014b5a053a233869&_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkAb&_md5=dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1

The person listed as the president of The Simi Group, Inc. by the Secretary of State is Daniel Patrick Desmond. A search of this court's files discloses that Daniel Patrick Desmond has filed three recent bankruptcy cases. Bankr. E.D. Cal. Nos. 12-38387, 13-3555, and 14-31728. In each of his three cases, Mr. Desmond has been represented by the same attorney as the Debtor in this case.

...

Simi Group, Inc.

Neither Mr. Desmond nor the Debtor list any ownership interest in Simi Group, Inc. on their respective schedules. In addition to identifying the address of the Simi Group, Inc., the Secretary of States reports that Daniel Desmond is the agent for service of process. LEXIS-NEXIS identifies Mr. Desmond as the president.

Whether owned by Debtor or not, it appears that the Simi Group, Inc. is not an entity authorized to do business in California.

...

RULING

Cause exists to grant the Trustee the relief requested. However, it appears that it may be in the best interest of creditors to convert the case to one under Chapter 7 rather than dismiss it.

At the hearing, no good reason [was given] for not dismissing this case. Debtor attempted to argue that her misstatements in this case and prior cases under penalty of perjury may have been “inadvertent.” Counsel for Debtor (and her husband in his bankruptcy cases) states that Debtor and her husband own Simi Group, Inc., and could not explain why on multiple occasions both of them have stated under penalty of perjury that they own no stock in any corporations.

With respect to failing to disclose the names of their spouse in the various bankruptcy cases, no credible explanation was provided.

With respect to illegally operating a corporation, [its] corporate powers having been suspended, counsel for Debtor argued that Debtor could just treat it as a sole proprietorship. That conflicts with the various Schedules I filed in the multiple bankruptcy cases by Debtor and her husband stating that they were and are employed by the corporation. Further, such statements that Debtor would now want to contend she was a sole proprietorship raises a series of other issues, including the non-disclosure of such sole proprietorship and the failure to provide for self employment taxes.

The Debtor is in default, the Debtor has knowingly failed to disclose assets, and the Debtor proposes to fund her plan with the illegal operation of the undisclosed corporation. This case is not being prosecuted in good faith.”

15-22909; Civil Minutes, Dckt. 81.

Previously, Debtor asserted that the nature of the business (run by a non-filing spouse) fluctuates because it relies on contracts to create software. Debtor states that the business was overly reliant on government contracts in the last year, but the business has since diversified its contracts to create a more stable flow of revenue.

On Schedule I, Debtor states that she and her non-debtor spouse are employed by “Simi Group, Inc.” Schedule I, *Id.* at 19. In checking on January 12, 2017, the California Secretary of State website, it is reported that the corporate powers of “The Simi Group, Inc.,” for which Daniel Patrick Desmond (Debtor’s spouse) is the Agent for Service of Process are “FTB Suspended.” <http://kepler.sos.ca.gov/>. It appears that

Debtor's income (still) is from an entity that cannot do business in California. *See* Cal. Rev. Tax § 23301 (providing for the suspension of all corporate powers, rights, and privileges).

On Schedule I, Debtor states that the gross income that she and her husband receive from their suspended corporation is \$14,500.00 per month. That equals \$174,000.00 per year gross income. On the Statement of Financial Affairs, Debtor states under penalty of perjury that the gross income from wages or business for herself and her husband have been:

- A. January 1, 2016–September 30, 2016.....\$90,750 (\$10,083/month avg.)
- B. January 1, 2015–December 21, 2015.....\$87,000 (\$7,250/month avg.)
- C. January 1, 2014–December 31, 2014.....\$21,000 (\$1,750/month avg.)

Statement of Financial Affairs, Part 2, Question 4; Dckt. 10 at 24–25.

Debtor also states that in 2016 she received \$90,327.00 for “Corporate Loan Repayment.” Statement of Financial Affairs, Part 2, Question 5; *Id.* at 25. No \$90,000.00 account receivable for a “Corporate Loan” was listed on Schedule B in the prior bankruptcy case. 15-22909, Dckt. 1.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case. From the evidence presented, and there now being a heretofore undisclosed \$90,000.00 asset in the prior case, Debtor has demonstrated her continuing bad faith in the filing and prosecution of bankruptcy cases. Debtor's only motivation appears to maintain a \$1,000,000.00 lifestyle without the ability to pay for a \$1,000,000.00 lifestyle.

Debtor discloses that The Simi Group, Inc. is a corporation in which she has an interest as an employee, but contends that it is just run by her husband (Daniel Desmond). Schedule B, Dckt. 10 at 6. In his most recent bankruptcy case, 14-31728, Daniel Desmond (represented by the same attorney in his multiple cases as the Debtor) stated under penalty of perjury that he had no interests in any corporations or business entities. 14-31728; Schedule B, Dckt. 30 at 4–7. However, on the Statement of Financial Affairs, Question 18, Mr. Desmond listed The SIMI Group, Inc. as a business for which he had 100% ownership. *Id.*; Dckt. 30 at 26.

The Debtor, previously and still, has not adequately addressed the intricate inter-leafing of nonproductive, dismissed bankruptcy filings by herself and her husband that create the following pattern:

Debtor Jennifer Ann Rianda	Filed	Dismissed	Dismissed	Filed	Daniel Patrick Desmond Filed Cases
			01/02/2013	10/16/2012	Chapter 13 Case 12-38387

Chapter 13 Case 13-23661	03/19/2013 (Filed two months after 12-38387 dismissed)	07/01/2013			
			02/12/2014	12/10/2013 (Filed five months after 13-23661 dismissed)	Chapter 13 Case 13-35555
			02/19/2015	11/30/2014 (Filed nine months after 13-35555 dismissed)	Chapter 13 Case 14-31728
Chapter 13 Case 15-22909	04/09/2015 (Filed five months after 14-31728 dismissed)	06/27/2016			
Current Chapter 13 Case 16-26966	10/19/2016 (Filed four months after 15-22909 dismissed)				

The Debtor and her non-debtor spouse show a pattern of filing a bankruptcy case, having it dismissed, and then filing a new bankruptcy case within a year (which new bankruptcy case will ultimately be dismissed). Debtor has failed to rebut by clear and convincing evidence the presumption of bad faith.

The Debtor and the non-debtor (in this case) spouse also advance an argument that they feel aggrieved that a trustee would obtain information during an bankruptcy case concerning possible good faith and use it against them. This argument appears to be based on the incorrect assumption that all bad faith grounds and information concerning the conduct, and misconduct, of a debtor must be established at the first meeting of creditors—which occurred on December 1, 2016, less than two months after this case was filed on October 19, 2016.

Debtor attempts to delay the court addressing this motion by saying there are other professionals out their providing advice to the non-debtor spouse, therefore the court should allow the case to proceed until Debtor can have an evidentiary hearing. One of the law firms is Boutin Jones, a well known firm in the Sacramento Area with several very experienced bankruptcy partners. No declaration is provided by an attorney from Boutin Jones providing any testimony of the operation of the business by Debtor and the non-debtor spouse while suspended.

Other than the non-debtor spouse saying that running a corporation with suspended powers is no significant issue, no professional with actual tax law expertise, nor a representative of the Franchise Tax Board provides any such testimony to the court.

Daniel Desmond's (non-debtor spouse's) assurances that only he owns Simi Group, Inc. is consistent with his statements in his prior bankruptcy cases. In Bankruptcy Case No. 14-31728 filed by Mr. Desmond stated under penalty of perjury that no stock or interests in incorporated and unincorporated businesses. 14-21728; Schedule B, Question 13 (stating "none"), Dckt. 20. He did list his employer as "Simi Group, Inc.," stating that he was employed as a "Sales and Software Developer." *Id.* at 16, Schedule I. However, on the Statement of Financial Affairs he lists his business as "The SIMI Group, Inc.," stating "100% ownership." *Id.* at 26, Statement of Financial Affairs Question 6.

Daniel Desmond now testifies that he made the loan, for which there is now reported a \$90,000 repayment in 2016 before he married the Debtor. Declaration, p.2:10–15; Dckt. 47. In Daniel Desmond's 2014 bankruptcy case he discloses he is married as of that time. *Id.*; at p. 16 in Schedule I, p. 21 in Statement of Financial Affairs Question 1.

Though purporting to have made a substantial loan to Simi Group, Inc. before being married (which had to pre-date the 2014 bankruptcy filing), no such asset is listed on Schedule B. *Id.* at 4–7. Mr. Desmond expressly stated "none" under penalty of perjury as to the specific question of whether he had any asset which was an account receivable.

The Motion is **xxxxx**.

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

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

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

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

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.

Correct 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, 2016. 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). The 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$2,161.00 delinquent in plan payments (with another \$1,085.00 coming due before the hearing), which represents multiple months of the \$1,085.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor is in material default under the Plan because the order confirming requires the Debtor to provide quarterly proof of tax deposits and annual reports of money paid toward taxes from a quarterly savings account (with any net to be paid into the Plan). To date, Debtor has not provided the Trustee with that tax information. Therefore, Debtor is in violation of the order confirming. Failure to provide information puts Debtor in material default under the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 3, 2017. Dckt. 157. Debtor promises to be current under the Plan and comply with the order confirming by the hearing. Unfortunately for the Debtor, a promise to pay and to perform is not evidence of such.

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.

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

CASE DISMISSED: 11/06/2016

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 18, 2016. 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: \$77.00 due on November 14, 2016.

<p>The Order to Show Cause is sustained, and the case is dismissed.</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. 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 18, 2016. 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 12, 2016.

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

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 13, 2017, Dckt. 46; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 46, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Trustee seeks dismissal of the case on the basis that Robin Bugbee ("Debtor") is \$3,850.00 delinquent in plan payments (with another \$1,925.00 coming due before the hearing), which represents multiple months of the \$1,925.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on January 4, 2017. Dckt. 57. Debtor did not provide any proof of service with the filing in violation of Local Bankruptcy Rule 9014-1(e). Despite the deficiency, the court has reviewed the pleading.

Debtor promises to cure the delinquency by the hearing and requests that the Motion be denied. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

72. [14-26573-E-7](#) PA LEE MOTION TO DISMISS CASE
DPC-6 Marc Caraska 12-13-16 [\[115\]](#)

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct 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 13, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. The Debtor filed a Notice of Conversion on January 3, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 119. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on January 3, 2017. *McFadden*, 37 B.R. at 521.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 as moot.

73. [14-30673](#)-E-13 **FERNANDO/SUSANA ORTIZ** **MOTION TO DISMISS CASE**
 DPC-2 Steven Alpert 12-21-16 [\[81\]](#)

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.

Correct 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 21, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee argues that Fernando Ortiz and Susana Ortiz (“Debtor”) are in material default under the Plan because the Debtor failed to provide for the priority claim of Community Centers of America Auburn, LLC (Claim #24) in the amount of \$5,579.96. The claim appears to assert priority based on rejection of a lease. Section 2.13 of the Plan makes that failure a breach of the Plan. Failure to provide for that claim puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 5, 2017. Dckt. 85. Debtor states that they will be filing a motion to modify to provide for the priority claim. Debtor promises to file the motion by January 11, 2017. Unfortunately for the Debtor, no motion has been filed.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

74.	<u>13-31975</u> -E-13 DPC-2	JACK/LINDA GANAS Peter Cianchetta	CONTINUED MOTION TO DISMISS CASE 9-9-16 [<u>153</u>]
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct 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 9, 2016. 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). The Debtors filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Motion to Dismiss is XXXXX.

The Trustee seeks dismissal of the case on the basis that Jack Ganas and Linda Ganas (“Debtor”) are \$7,875.05 delinquent in plan payments (with another \$2,057.03 coming due before the hearing), which represents multiple months of the \$2,057.03 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an opposition on September 28, 2016. Dckt. 162. The Debtor states that they have prepared and filed a new plan along with a Motion to Confirm. They state that the Plan increases the dividend to creditors with unsecured claims to 100%.

OCTOBER 12, 2016 HEARING

At the hearing, the court continued the matter to 3:00 p.m. on November 1, 2016, to be heard in conjunction with Debtor’s Motion to Confirm Modified Plan. Dckt. 164.

NOVEMBER 1, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, to allow Debtor to actively prosecute modification of the Plan.

DISCUSSION

Debtor filed a Modified Plan and Motion to Confirm, which the court has denied. While professing a desire to sell the home, the proposed Modified Plan did not provide for the sale, did not set any timing for the sale, and did not set any benchmarks for a sale. Dckt. 160. As written, Debtor had no obligation to sell the property, and if Debtor decided to sell it, it could be at any time.

Previously, the court was concerned that Debtor was not prosecuting this case in good faith. Rather, it appeared that what was being offered as the defense to the Motion to Dismiss was a Plan that said Debtor will, at some unknown time, sell property, if desired.

On December 20, 2016, however, the court approved a Motion to Sell Debtor’s property. Dckt. 199.

At the hearing, the Trustee reported that Debtor **has / has not** cured the delinquency. Cause **exists / does not exist** to dismiss the case. The Motion is **xxxxx**.

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

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

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

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

75. [11-48177](#)-E-13 **JOYCE LEE** **MOTION TO DISMISS CASE**
DPC-4 **Stephen Murphy** **12-21-16 [83]**

Final Ruling: No appearance at the January 18, 201 hearing is required.

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

Correct 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 21, 2016. 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.

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Trustee, December 2016 was the sixtieth month, but the Plan is not complete due to Debtor not adjusting the plan payment under § 2.08(b)(4)(I). The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

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

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

76. [16-27480](#)-E-13 CANDISE KIRKPATRICK MOTION TO DISMISS CASE
DPC-2 Steven Alpert 12-28-16 [[17](#)]

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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.**

77. [12-25182](#)-E-13 ELLIOTT/TANYA BEVERLEY MOTION TO DISMISS CASE
DPC-6 Eric Schwab 12-14-16 [[71](#)]

Final Ruling: No appearance at the January 18, 2016 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 13, 2016, Dckt. 79; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 79, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

78. [12-27584](#)-E-13 **JAVIER/CHRISTINA** **MOTION TO DISMISS CASE**
DPC-1 **HERNANDEZ** **12-14-16 [40]**
 Thomas Gillis

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 5, 2017, Dckt. 47; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Correct 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 13, 2016. By the court's calculation, 36 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). The 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 xxxxx.

The Trustee seeks dismissal of the case on the basis that Paul Ludovina ("Debtor") is \$3,400.00 delinquent in plan payments (with another \$1,700.00 coming due before the hearing), which represents multiple months of the \$1,700.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on December 29, 2016. Dckt. 155. Debtor asserts that the delinquency was cured on December 27, 2016, when Debtor made a payment to the Trustee of \$5,100.00.

At the hearing, the Trustee reported that Debtor has / has not cured the delinquency. Cause exists / does not exist to dismiss the case. The Motion is xxxxx.

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

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

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

IT IS ORDERED that the Motion to Dismiss is xxxxx.

80.

[15-26886](#)-E-13
DPC-1

DANA THOMPSON
Matthew DeCaminada

MOTION TO DISMISS CASE
12-21-16 [\[20\]](#)

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 26 & 29. 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 the 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the January 18, 201 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,382.29 delinquent in plan payments (with another \$504.53 coming due before the hearing), which represents multiple months of the \$504.53 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

82. [16-23888](#)-E-13 **ALFREDO RODRIGUEZ** **MOTION TO DISMISS CASE**
DPC-2 **Peter Lago** **12-7-16 [45]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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.**

83. [16-25089](#)-E-13 **MARK/JENNIFER GALISATUS** **MOTION TO DISMISS CASE**
DPC-3 **Daniel Davis** **12-14-16 [50]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on January 9, 2017, Dckt. 63; no prejudice to the responding party appearing by the dismissal of the Motion; the 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 the Debtor; the Ex Parte motion is granted, the 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 the Trustee having been presented to the court, the 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 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 18, 201 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$25,303.00 delinquent in plan payments (with another \$4,329.00 coming due before the hearing), which represents multiple months of the \$4,329.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the January 18, 201 hearing is required.

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

Correct 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, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,685.01 delinquent in plan payments (with another \$2,347.00 coming due before the hearing), which represents multiple months of the \$2,347.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that the 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 18, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

86.	<u>16-28191</u> -E-13	MARK FERGUSON Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 12-27-16 <u>17</u>
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Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

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

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

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

IT IS ORDERED that the Order is discharged as moot, the case having been 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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 17, 2016. 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). The 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>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee argues that the Debtor did not commence making plan payments and is \$5,742.00 delinquent in plan payments (with another \$2,871.00 coming due before the hearing), which represents multiple months of the \$2,871.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR'S OPPOSITION

Robert MacBride ("Debtor") filed an Opposition to the Trustee's Motion on November 2, 2016. Dckt. 59. The Debtor states that the Trustee does not have an obligation to make any adequate protection payments to a creditor until a proof of claim has been filed and that the Trustee is required to pay the arrears owed to the creditor holding a secured claim before he can make payments to either the priority unsecured creditor or the unsecured creditor, which would mean that there has been no unreasonable delay to those creditors.

NOVEMBER 16, 2016 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 6, 2016, to allow Debtor to become current with plan payments and to address any other defaults.

DECEMBER 6, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, because Debtor asserted that \$8,531.00 was paid to the Trustee on December 3, 2016 (although the payment was not documented), and to allow Debtor to seek counsel.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee filed a Supplemental Declaration on January 4, 2017. Dckt. 80. The Trustee reports that Debtor remains \$5,724.00 delinquent in plan payments. The Trustee reports that a "triple payment" of \$8,631.00 was made on December 7, 2016. The Trustee also reports that no new plan is pending before the court after the last one was denied on December 6, 2016. *See* Dckt. 78.

DISCUSSION

Debtor appears to have cured one delinquency, only to fall behind yet again. Additionally, Debtor does not appear to have taken the court's advice that bankruptcy counsel is necessary in this case because a review of the docket shows that no substitution of attorney has been filed with the court. 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 having 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.

Correct 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 13, 2016. By the court's calculation, 36 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). The 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$3,651.59 delinquent in plan payments (with another \$591.00 coming due before the hearing), which represents multiple months of the \$591.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on January 4, 2017. Dckt. 90. Debtor states that a new plan and motion to confirm will be filed by the hearing. Unfortunately for the Debtor, no motion and plan have been filed with the court.

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 having 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.

89. [14-30097](#)-E-13 **IRVIN/THERESA WHITE** **CONTINUED MOTION TO DISMISS**
DPC-3 **Thomas Amberg** **CASE**
10-19-16 [88]

Final Ruling: No appearance at the November 16, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 19, 2016. 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). The 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 Trustee seeks dismissal of the case on the basis that Irvin White and Theresa White ("Debtor") are \$2,600.00 delinquent in plan payments (with another \$650.00 coming due before the hearing), which represents multiple months of the \$650.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Further, the Trustee argues that Debtor's Motion to Confirm and Declaration in support state that the Debtor has a trial loan modification of \$2,068.31 per month. The Trustee is not aware of any motion to approve a loan modification agreement and believes that Debtor may have violated the Plan.

The Trustee also moves for dismissal on grounds that Debtor has submitted 2015 tax returns to the Trustee that disclose the Debtor's average monthly gross income from wages in 2015 as \$10,180.00, which is \$927.00 greater than reported on Schedule I. Additionally, the 2015 tax return disclosed that the Debtor received \$29,215.00 in early distributions from qualified retirement plans in 2015. The Order Confirming Plan requires Debtor to immediately notify the Trustee, in writing, of any employment change, and the Plan limits Debtor's ability to transfer property.

DEBTOR'S RESPONSE

Debtor filed a Response to the Trustee's Motion on November 1, 2016. Dckt. 92. The Debtor states that they are planning to file a modified plan before the hearing date on this Motion. Additionally,

Debtor's counsel indicates that he will be unavailable from November 14, 2016, through November 26, 2016, for personal reasons and requests that the hearing on this matter be continued until at least the court's next dismissal calendar.

DEBTOR'S SUPPLEMENTAL RESPONSE

Debtor filed a Supplemental Response on November 8, 2016. Dckt. 94. Debtor claims to be current on all plan payments. Debtor's Attorney now represents that he will be unavailable from November 9, 2016, through November 27, 2016. Debtor requests that the Motion be denied or continued to January 18, 2017.

TRUSTEE'S REPLY

The Trustee filed a Reply on November 9, 2016. Dckt. 96. The Trustee states that he has no objection to continuing the matter to January 18, 2017.

TRUSTEE'S SECOND SUPPLEMENTAL RESPONSE

The Trustee filed a Supplemental Response on January 4, 2017. Dckt. 112. The Trustee states that Debtor is current under both the previously confirmed Plan, as well as the proposed Modified Plan, which is set for hearing on February 14, 2017. Additionally, Debtor has set a Motion to Approve Loan Modification for hearing on January 24, 2017.

The Trustee requests that the Motion be denied.

DISCUSSION

The Trustee having acknowledged that Debtor has resolved his grounds for seeking dismissal and having requested that the Motion be denied, the Motion is denied without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

90. [16-25998-E-13](#)

GENEVIEVE BALDINI
Scott Shumaker

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
11-14-16 [\[24\]](#)

Final Ruling: No appearance at the January 18, 2017 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 16, 2016. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on November 7, 2016.

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

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee argues that the Debtor did not commence making plan payments and is \$2,960.00 delinquent in plan payments (with another \$2,960.00 coming due before the hearing), which represents one month of the \$2,960.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case. 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 having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

92. [15-27799-E-13](#) **MARK LUNA** **MOTION TO DISMISS CASE**
 DPC-2 **Michael Benavides** **12-14-16 [38]**

Final Ruling: No appearance at the January 18, 2017 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,733.94 delinquent in plan payments (with another \$1,923.94 coming due before the hearing), which represents multiple months of the \$1,923.94 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.