

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

**The court has reorganized the cases, placing all of the Final Rulings
in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 16.**

**The court has also reorganized the items for which the tentative rulings
are issued, Items 1–15, attempting to first address the items in
which short argument is anticipated.**

March 21, 2018, at 10:00 a.m.

1.	<u>18-20003</u> -E-13 DPC-1	JAMES ZAMMIELLO Hank Walth	MOTION TO DISMISS CASE 3-7-18 <u>[29]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 7, 2018. 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). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule

and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that James Zammiello (“Debtor”) is \$2,789.00 delinquent in plan payments, which represents one month of the \$2,789.00 plan payment. Before the hearing, another plan payment will be due. Debtor has paid \$0.00 into the Plan to date. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee asserts that Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Plan. *See* LOCAL BANKR. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

2.

**17-24205-E-13
DPC-1**

**MARK BRADY
Dale Orthner**

**CONTINUED MOTION TO DISMISS
CASE
1-22-18 [\[45\]](#)**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 22, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Mark Brady ("Debtor") is \$7,275.00 delinquent in plan payments, which represents multiple months of the \$2,425.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 12, 2018. Dckt. 52. Debtor promises to file a modified plan before the hearing date. Debtor filed the document on non-pleading paper without the help of his attorney. Debtor alleges he has had difficulty communicating with his attorney.

FEBRUARY 21, 2018 HEARING

Debtor appeared at the hearing and requested that the court continue the hearing one more time, stating that he is attempting to work with his current counsel. Debtor stated that, if necessary, he would seek new counsel. Dckt. 53. The court continued the hearing to 10:00 a.m. on March 21, 2018, to allow Debtor an opportunity to consult with counsel.

RULING

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

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

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

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

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

3.	<u>16-26838</u> -E-13 DPC-1	KATRINA CULVERSON Scott Hughes	CONTINUED MOTION TO DISMISS CASE 12-20-17 <u>[60]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 20, 2017. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Katrina Culverson (“Debtor”) is \$6,507.60 delinquent in plan payments, which represents multiple months of the \$3,262.95 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on January 2, 2018. Dckt. 64. Debtor explains that she did not receive retirement pay for two months during summer 2017, and then in September 2017, she had numerous

expenses for repairing her vehicle. Debtor promises to pay \$3,265.00 on December 29, 2017; \$3,265.00 on January 15, 2018, and then bring the payments current by March 25, 2018.

JANUARY 17, 2018 HEARING

At the hearing, the Chapter 13 Trustee reported that Debtor had cured the default partially and that the hearing should be continued. Dckt. 66. The court continued the hearing to 10:00 a.m. on March 21, 2018. *Id.*

RULING

No further pleadings have been filed since the January 17, 2018 hearing indicating whether the default has been cured completely. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 20, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Emma McZeek-Tanko ("Debtor") is \$710.00 delinquent in plan payments, which represents multiple months of the \$356.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on February 21, 2018. Dckt. 99. Debtor promises either to cure the delinquency or to file a modified plan before the hearing date.

RULING

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

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

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

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

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

5. 18-20140-E-13 **VIRGINIA RYAN**
DPC-2 **Steele Lanphier**

MOTION TO DISMISS CASE
3-6-18 [31]

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 6, 2018. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) reports that he was advised by Virginia Ryan’s (“Debtor”) counsel that Debtor passed away prior to the first Meeting of Creditors, making Debtor’s appearance impossible at that meeting. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not commence making plan payments and is \$600.00 delinquent in plan payments, which represents one month of the \$600.00 plan payment. 11 U.S.C.

§ 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2018. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Robert Deforrest and Mary Deforrest ("Debtor") are \$1,700.00 delinquent in plan payments, which represents one month 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).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 27, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2011, 2012, 2013, 2014, 2015, and 2016 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

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

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Misael Bautista and Luz Maria Bautista (“Debtor”) are \$2,750.32 delinquent in plan payments, which represents multiple months of the \$2,251.44 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

8. [17-22292-E-13](#) **KRISTIN JOHANSON JACKSON** **MOTION TO DISMISS CASE**
DPC-2 **Thomas Amberg** **2-21-18 [60]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 21, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kristin Johanson Jackson (“Debtor”) is \$775.00 delinquent in plan payments, which represents multiple months of the \$385.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S RESPONSE

Debtor filed a Response on February 21, 2018. Dckt. 64. Debtor anticipates becoming current on or before the date of the scheduled hearing, or, if unable to become current, Debtor anticipates filing a modified plan on or before the date of the scheduled hearing.

RULING

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

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

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

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

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

9. [17-25491](#)-E-13 **KATHLEEN HILL**
George Burke

**CONTINUED ORDER TO SHOW
CAUSE—FAILURE TO PAY FEES
11-27-17 [32]**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on November 29, 2017. The court computes that 49 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$77.00 due on November 20, 2017.

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. At the January 17, 2018 hearing, the court continued the matter to 10:00 a.m. on March 21, 2018. Dckt. 42. 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:

11. [17-24979](#)-E-13 **MARIO LOPEZ AND LEAH** **CONTINUED MOTION TO DISMISS**
DPC-3 **ALBERTO** **CASE**
 Lucas Garcia **12-7-17 [50]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2017. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Mario Lopez and Leah Alberto ("Debtor") are \$2,85.00 delinquent in plan payments, which represents multiple months of the \$950.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee's Motion argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 3, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed a Amended Plan and Motion to Confirm on December 15, 2017. Dckts. 54, 58. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 56. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

JANUARY 17, 2018 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on March 21, 2018, due to an amended plan having been set for confirmation. Dckt. 68.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 81. Debtor argues that the delinquency has been cured and that an amended plan has been proposed.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on March 9, 2018. Dckt. 83. He argues that Debtor is delinquent \$2,850.00 under the proposed plan and that there are additional problems raised for prior plans that will be raised formally again with the latest plan.

RULING

While filing of an amended plan could cure the grounds raised in a motion to dismiss, here the Chapter 13 Trustee has shown that Debtor is delinquent under the latest proposed plan, which makes it both unconfirmable and is a ground to dismiss this case for cause. The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney , Chapter 13 Trustee, and Office of the United States Trustee on March 7, 2018. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

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

<p>The Motion to Reconsider is granted.</p>
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US Bank Trust N.A. as Trustee for the Bungalow Series F Trust, its successors and assigns (“Creditor”) moves for the court to reconsider its “Order to Continue Hearing and Requiring the Appearance of Counsel and Clients.” Dckt. 85. Nowhere in the Motion, Declaration, or Exhibits does Creditor actually identify the specific order in question. Creditor does not cite any language from the court’s order for reference, and Creditor has not attached the order for the court’s review with this Motion.

Despite that shortcoming—which arguably could be a failure to state grounds with particularity in violation of Federal Rule of Bankruptcy Procedure 9013—the court has reviewed the docket for this case and has determined that the order in question (the only order requiring the appearance of Creditor and counsel) is the court’s order dated March 2, 2018, issued after the February 27, 2018 hearing on Kenneth Tabor’s (“Debtor”) Motion to Confirm Amended Plan (Docket Control No. SS-3). Dckt. 66.

The court's order states in part:

IT IS FURTHER ORDERED that Kristin Zilberstein, Esq.; a senior representative(s) of U.S. Bank, N.A., as Trustee, with personal knowledge of the claim in this case and such creditor's policies and procedures for filing proofs of claim in bankruptcy cases; and Scott D. Shumaker, counsel for Debtor, and each of them, shall appear **in person** at the continued hearing at 3:00 p.m. on April 24, 2018. **NO TELEPHONIC APPEARANCES PERMITTED FOR ANY OF THE PERSONS IDENTIFIED IN THIS PARAGRAPH.**

Id. at 4. That section of the court's order appears to be the portion that Creditor wishes to have reconsidered now.

The court noted that personal appearances are necessary because Creditor has been "either unwilling or unable to provide any evidence to substantiate the existence of any obligation owed to it or the beneficiaries of the trust for which it is a trustee." *Id.* at 3. Additionally, the court had issued its tentative ruling for the February 27, 2018 hearing with a large red capitalized banner informing Creditor that appearance was necessary, but "Counsel and Creditor U.S. Bank, N.A. failed to avail themselves of this opportunity to address the court's concerns at the hearing or by making telephonic appearances." *Id.*

The "Motion" filed by U.S. Bank, N.A. is seven pages in length and appears to be a combined points and authorities. Dckt. 85. No other points and authorities has been filed. This is in violation of Local Bankruptcy Rules 9004-2(c)(1) and 9014-1(d)(1), which requires that the motion and points and authorities be separate pleadings. The exception to this Rule (9014-1(d)(4)) permits such a combined document only if it is six pages or less in length.

The impermissible Mothorities filed begins with a long recitation of the underlying loan, the transfers of the note upon which the claim is based, and the engagement of counsel. The discussion of engagement of counsel states that if U.S. Bank, N.A. identified there being an "unauthorized transfer" of the property that secured the obligation, then U.S. Bank, N.A. would not have counsel file a proof of claim.

This contention that the Bank would not file a proof of claim if it was owed a bona fide obligation that was secured by property of the bankruptcy estate appears inconsistent with the provision of 11 U.S.C. § 506(a) defining a secured claim and 11 U.S.C. § 101(5) defining a claim.

The Mothorities states that due to work assigned to counsel, a delay occurred in the drafting of proofs of claims for U.S. Bank, N.A. It is not asserted why U.S. Bank, N.A., a large, well known, federally insured financial institution is dependent on one outside counsel for the preparation of claims to be filed in bankruptcy cases.

The Mothorities then proceeds to advise the court that Bank's counsel, though no proof of claim had been filed, was able to file an objection to confirmation. This part of the Mothorities does not address there being no evidence filed with the objection to confirmation, or what basis U.S. Bank, N.A. and its counsel believed that it did not need to present evidence to support relief the Bank sought from the court.

The Mothorities then asserts that due to a calendaring error, counsel for U.S. Bank, N.A. did not attend the hearing on the objection to confirmation filed fur U.S. Bank, N.A. Because of the calendaring error, counsel for U.S. Bank, N.A. did not review the court's tentative ruling and did not know the court was requiring counsel's attendance at the hearing on the objection to confirmation.

The Mothorities then addresses counsel's action to consider the issues raised by the court, the corrective action to be taken in counsel's office procedures, and the communication with Debtor's counsel to address the Bank's concerns.

The court notes that the Mothorities candidly and responsibly addresses the issue, not offering excuses, but acknowledging the shortcomings, and then tying in the changes to reasonably avoid these issues arising in the future.

The pleading continues, with the legal basis being identified as Federal Rule of Civil Procedure 60(b). Technically, the provisions of Rule 60(b) provide the applicable law, but are made applicable by Federal Rule of Bankruptcy Procedure 9024. The analysis in the Mothorities is on point and lays out the basis for the court to grant relief from the prior order based on mistake, as well as "other grounds" for which such relief is proper (corrective conduct addressing the issues).

Kristin Zilberstein ("Counsel") filed a Declaration in support of the Motion, and she argues that after filing an objection to confirmation of Debtor's plan on January 9, 2018, there was an internal calendaring error at her office that resulted in Counsel not appearing at the first confirmation hearing on January 23, 2018. Dckt. 86 at 3. Counsel states that when the court's order continuing that confirmation to February 27, 2018, arrived at her office, it arrived with the court's order on a motion to impose the automatic stay. *Id.* Counsel states that she forwarded the materials to another attorney in her office, assuming that the other attorney would review the docket for any relevant upcoming hearings affecting Creditor. *Id.* That review apparently never occurred, which led to another failure to calendar the confirmation hearing in this case, which in turn led to Counsel not reviewing upcoming hearing dates for matters affecting Creditor. *Id.* Finally, Counsel states that she was not aware of the requirement to attend the February 27, 2018 hearing because she did not review the court's tentative rulings posted on the court's website. *Id.* at 4.

CHAPTER 13 TRUSTEE'S RESPONSE

David Cusick ("the Chapter 13 Trustee") filed a Response on March 12, 2018. Dckt. 92. He argues that the court should consider granting Creditor's Motion, at least partially, because there is a motion to dismiss set for March 21, 2018, due to Debtor's delinquency on plan payments.

Second, the Chapter 13 Trustee notes that Creditor and Debtor have agreed to a stipulation calling for an amended plan that treats Creditor's claim (now filed) in Class 1 in the amount of \$98,526.98 and arrears of \$55,151.23. The stipulation calls for monthly payments of \$927.26. The Chapter 13 Trustee does not oppose treatment in Class 1, but he notes that until an amended plan is filed, he cannot determine if any such plan would be accelerating Creditor's debt.

Finally, the Chapter 13 Trustee notes that for his opposition to the continued motion to confirm Debtor's plan, he had asserted that pay advices and business documents were not provided, the Meeting of

Creditors had not been concluded, and the proposed plan was on an old form. The Meeting of Creditors has been concluded now, and the missing documents have been provided, but no plan has been filed on the correct form yet.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Federal Rule of Bankruptcy Procedure 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

FED. R. CIV. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1203 (5th Cir. 1993). The court uses equitable principles when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3d ed. 1998). The so-called catch-all provision, Federal Rule of Civil Procedure 60(b)(6), is “a grand reservoir of equitable power to do justice in a particular case.” *Uni-Rty Corp. V. Guangdong Bldg., Inc.*, 571 F. App’x 62, 65 (2d Cir. 2014) (citation omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, relief under Rule 60(b)(6) may be granted in extraordinary circumstances. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 863 & n.11 (1988).

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts that, if taken as true, allow the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶¶ 60.24[1]–[2] (3d ed. 2010); see also *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Rule 60(b), courts consider three factors: “(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default.” *Falk*, 739 F.2d at 463 (citations omitted).

DISCUSSION

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a Rule 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers “the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Gravatt v. Paul Revere Life Ins. Co.*, 101 F. App’x 194, 196 (9th Cir. 2004) (citations omitted); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (citation omitted).

Creditor’s Counsel argues that there were numerous intervening events that constitute mistake, inadvertence, and excusable neglect on its part. Dckt. 85 at 5. Counsel points to an increased workload from Creditor at the end of 2017, to moving legal offices at the same time, and to staff being on vacation because of the holidays as reasons why there have been errors in this case, including delayed filing of a proof of a claim and the filing of an opposition that was devoid of factual evidence. *Id.* at 2–3.

U.S. Bank, N.A. and counsel have addressed the court’s concerns. Both the Bank and counsel have provided the court with not only the reason for the offending conduct, but also what has been done to prevent (to the extent humanly possible) such errors, including not filing proofs of claim or filing motions for which there is no evidentiary basis.

In substance, U.S. Bank, N.A. and counsel have proactively addressed what would have been addressed at the later hearing.

As such, the motion for relief from the court’s March 2, 2018 Order (Dckt. 66) is granted. The court vacates the order continuing the hearing and requiring the attendance of counsel, U.S. Bank, N.A., counsel, and counsel for Debtor, with no appearance by them.

In light of the Stipulation of the parties concerning the substance of the Opposition (Dckt. 74), the court shall issue a separate order continuing the hearing.

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

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

The Motion to Reconsider filed by US Bank Trust N.A. as Trustee for the Bungalow Series F Trust, its successors and assigns (“Creditor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Order of this Court Continuing Hearing [on Objection to Confirmation] and Requiring the Appearance of Counsel and Clients, Dckt. 66 is vacated in its entirety.

Based on the Stipulation of the Parties resolving the grounds for the Opposition to Motion to Confirm (Stipulation, Dckt. 74), the court shall issue a separate order setting the continued hearing on the Motion to Confirmation to 3:00 p.m. on April 24, 2018.

ORDER CONTINUING HEARING ON MOTION TO CONFIRM

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

DCN: SS-3

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

The Motion to Confirm a Chapter 13 Plan filed by Kenneth Roger Tabor, 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 hearing on the Motion to Confirm is continued to April 24, 2018 at 3:00 p.m.

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on March 6, 2018. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kenneth Tabor (“Debtor”) is \$3,190.00 delinquent in plan payments, which represents one month of the \$3,190.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

At the hearing, Debtor’s counsel **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**

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

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

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

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

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

14.	<u>16-24134-E-13</u> DPC-1	LETICIA BARRERA Thomas Gillis	CONTINUED MOTION TO DISMISS CASE 12-19-17 <u>[31]</u>
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**APPEARANCE OF LETICIA BARRERA,
THE CHAPTER 13 DEBTOR, AND
THOMAS GILLIS, DEBTOR’S COUNSEL,
REQUIRED AT THE HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 19, 2017. 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). If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Leticia Barrera (“Debtor”) is \$3,144.20 delinquent in plan payments, which represents multiple months of the \$1,799.90 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

JANUARY 17, 2018 HEARING

At the hearing, Debtor appeared and pleaded with the court not to dismiss this case. Dckt. 35. Debtor reported that she has been attempting to speak with her counsel about the case, but she alleges that his staff advised her that to have such an appointment, she would be charged an additional \$350.00. Debtor's counsel was not present at the hearing.

The court did not have evidence of the substance of the communications between Debtor and her counsel's staff, but the court noted that there may be miscommunication. The court continued the hearing to 10:00 a.m. on March 21, 2018, to allow Debtor time to meet with her counsel and to allow counsel to clarify any miscommunication. Dckt. 36.

RULING

No further pleadings have been filed. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

PENDING MOTION FOR RELIEF FROM AUTOMATIC STAY

Wells Fargo Bank, N.A. has filed a Motion for Relief From the Automatic Stay. Dckt. 40. As required by Federal Rule of Bankruptcy Procedure 9013, Wells Fargo Bank, N.A. states with particularity the following grounds:

Movant hereby moves this Court for an Order granting relief from the automatic stay on the following grounds:

1. Pursuant to 11 U.S.C. § 362(d)(1) for cause: the evidence establishes that Movant has not received 4 post-petition payments due to it. Therefore, Movant's interest in the Property is not adequately protected and that cause otherwise exists to terminate the stay.

Motion, Dckt. 40 at 2:3–15. The grounds consist of the Bank's one "finding of fact" that there are four post-petition payments in default. Bank then states its conclusion of law that there is not adequate protection. Thus, there appears little for the court to do, Wells Fargo Bank, N.A. having made all necessary findings of fact and conclusions of law for the court, but to now let Wells Fargo Bank, N.A. sign its own order for the relief it seeks.

The Motion does include the additional instruction that the court is to read the Declaration, read the points and authorities, and assemble the other evidence filed with the Motion. It appears that Wells Fargo Bank, N.A. is requesting the court to draft a motion that complies with Federal Rule of Bankruptcy Procedure 9013, gratis, for Wells Fargo Bank, N.A.

Wells Fargo Bank, N.A. appears regularly in this court and well knows that the court equally and fairly requires compliance with the Federal Rules of Bankruptcy Procedure, Federal Rules of Bankruptcy

Procedure, Federal Rules of Evidence, Local Bankruptcy Rules, and the law for all parties. Further, Wells Fargo Bank, N.A. well knows that the court does not provide free legal services for the Bank.

Additionally, in the prayer in the Motion, Wells Fargo Bank, N.A. appears to throw in other relief it is demanding that the court issue, for which no grounds are stated in the “motion.” These include that the fourteen-day stay of enforcement of an order granting relief, as mandated by the Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3) should be waived. As Wells Fargo Bank, N.A. well knows, before the court “overrules” the Supreme Court and waives the required fourteen-day stay, some sufficient grounds must be stated in the motion.

The prayer also requests the court order that any relief be effective upon any conversion of the case to another Chapter. Thus, it appears that Wells Fargo Bank, N.A. admits that it has violated the automatic stay in the many cases in which such “special” relief is not provided for in an order granting relief, and then the case is converted to one under Chapter 7.

Finally, Wells Fargo Bank, N.A. appears to admit that in every bankruptcy case in which it communicated with any debtor or debtor’s counsel about a loan modification, refinance agreement, workout, or any communication concerning its claim, the Bank has violated the automatic stay if no relief from stay has been granted permitting such conduct. The prayer in Wells Fargo Bank, N.A.’s Motion for Relief seeks such self-admitted “necessary” relief.

Such issues will be addressed in connection with the subsequent hearing on the Motion for Relief, or such other order for hearing as the court determines necessary and proper.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 4, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Byllie Dee ("Debtor") did not commence making plan payments and is \$667.00 delinquent in plan payments, which represents one month of the \$667.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

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

Finally, Debtor has not provided the Chapter 13 Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

NOVEMBER 1, 2017 HEARING

At the hearing, the court noted that Debtor had requested a continuance due to a connection to fires in Santa Rosa. Dckt. 26. The court reviewed Debtor's pleadings and his prior cases, and discussed with him numerous deficiencies that exist in this case. Debtor argued that he wants to be represented by counsel, and to afford Debtor time to obtain counsel, the court continued the hearing to 10:00 a.m. on January 17, 2018. Dckt. 28.

The court noted that there appear to be significant assets (in the form of vehicles) in this case, and the court stated that at the continued hearing the court would consider whether dismissal or conversion was appropriate. Dckt. 26.

JANUARY 17, 2018 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 21, 2018, while a motion for relief from the automatic stay asserting grounds under 11 U.S.C. § 362(d)(4) was pending. Dckt. 65.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 13, 2018. Dckt. 78. FN.1. Debtor states that \$2,113.62 was paid on February 12, 2018, to cure the delinquency. He states that he has filed declarations about not having to file tax returns and not having pay advices. He claims that proof of his Social Security Number was provided on February 12, 2018. Finally, he claims that the plan defects have been cured by filing an amended plan.

FN.1. Debtor filed the Opposition, Declaration, and Exhibits in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." LOCAL BANKR. R. 9004-2(c)(1). Debtor is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

FEBRUARY 21, 2018 HEARING

At the hearing, Debtor presented extensive arguments about why the court should not take as "accurate" what was stated on the Schedules because Debtor (who has filed multiple cases) did not

understand. Dckt. 82. Debtor repeatedly blamed his ongoing problems on a prior attorney in one of his Northern District of California cases.

The court noted that while Debtor asserted that a non-judicial foreclosure sale is purported to have occurred after the commencement of this case, he is making no effort to recover and provide that \$300,000+ in net value to pay his creditors.

The court continued the hearing to 10:00 a.m. on March 21, 2018, to allow Debtor a final-final-final chance to properly prosecute this case. Dckt. 89. Debtor professed that he would engage counsel, though his efforts in this case appear to be ephemeral. Dckt. 82.

CHAPTER 13 TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on March 9, 2018. Dckt. 99. The Chapter 13 Trustee states that Debtor is current under the most recently filed plan (of February 12, 2018) and that he has filed a declaration explaining why he has not provided tax returns and pay advices. The Chapter 13 Trustee received a copy of Debtor's Social Security card on February 13, 2018. He notes that there is a pending motion to confirm a plan that is being opposed.

DISCUSSION

Since the February 21, 2018 hearing, Debtor does not appear to have acquired legal counsel for this case. Instead, Debtor continues in attempting to prosecute this case without legal support. The outcome of that decision now leads to dismissal of this case.

Points of Debtor's Opposition

Income and Expenses

Debtor's Opposition begins with that he has made a payment of \$2,113.62 to the Chapter 13 Trustee on February 12, 2018. Opposition, p.2 ¶ 1; Dckt. 78. This represents six payments of \$352.27 each, including the payment for February 2018. Attached as Exhibit A is a copy of a receipt for a cashier's check dated February 12, 2018, in the amount of \$2,113.62, which is made payable to David Cusick. *Id.* at 4.

On Schedule I, Debtor has provided the court with income information under penalty of perjury. Dckt. 10 at 25–26. On it, he states having gross monthly income of \$4,450.00, which when annualized is \$53,400.00. He has no deductions or withholding for any state or federal taxes.

On Schedule J, Debtor states that he has no dependents. *Id.* at 27–28. For total monthly expenses, Debtor states having (\$3,733.00) in expenses, leaving him with \$717.00 per month in Net Monthly Income. *Id.* at 28. The expenses stated under penalty of perjury on Schedule J are:

- A. Residence Mortgage.....(\$378)
- B. Residence Property Taxes.....(\$115)

- C. Residence Insurance.....(\$106)
- D. Residence Home Maintenance.....(\$-0-)

It is not reasonable that a homeowner, or even a tenant, does not have any maintenance expenses, even if putting light bulbs in lamps.

- E. Electricity/Heat/Gas.....(\$250)
- F. Water/Sewer/Garbage.....(\$210)
- G. Phone/Internet/Cable.....(\$107)
- H. Food and Housekeeping Supplies.....(\$400)
- I. Clothing/Laundry/Dry Cleaning.....(\$-0-)
- J. Personal Care Products/Services.....(\$-0-)
- K. Medical/Dental.....(\$ -0-)

It is not reasonable that during a five-year plan Debtor would never buy clothes, clean clothes, get a hair cut, buy deodorant, buy any over the counter medication, or see a dentist or doctor.

- L. Transportation.....(\$350)

For this expense, Debtor reports having two cars, a 2007 Maserati and a 1977 Rolls Royce. A (\$350) per month expense for registration, maintenance, and fuel for these two vehicles is not credible. If the court assumes an annual registration fee of (\$425) for the two vehicles, that averages to (\$36) per month. For maintenance for a Maserati and Rolls Royce, the court will use \$2,400 per year (assuming no major repairs). That averages (\$200) per month. After deducting (\$235) for registration and maintenance, that leaves \$115.00 for fuel. At \$3.55 per gallon (assuming that Debtor drives the Maserati as his everyday vehicle and the Rolls Royce is an investment, rarely driven car), Debtor can purchase thirty-two gallons of gas each month. Assuming that the Maserati gets fifteen miles to the gallon average, that allows Debtor to drive 480 miles per month—or sixteen miles per day in a thirty-day month. That does not appear to be a realistic statement of the vehicle expense.

- M. Entertainment/Recreation.....(\$ -0-)

Again, for the five years of a bankruptcy plan, it does not appear credible that Debtor never has any entertainment or recreation expenses.

- N. Health Insurance.....(\$137)
- O. Vehicle Insurance.....(\$428)

Debtor's vehicle expense, for one man over the age of twenty-five is \$5,136 per year for his two vehicles. Presumably, that is high given the luxury, high performance character of the two vehicles. Just this one expense alone is one-tenth of all of Debtor's expenses. This expense, if accurate, and the high percentage of the expenses are not indicative of a credible debtor prosecuting a Chapter 13 Plan.

P. Taxes (based on \$53,400.00 for a single adult).....(\$ -0-)

The court cannot divine, based on what has been filed under penalty of perjury by Debtor and in opposition to this Motion, how a single adult Debtor in the State of California who earns \$53,400.00 per year pays \$0 in federal income tax, \$0 in state income tax, and \$0 in Social Security, and \$0 in the other miscellaneous taxes and withholdings imposed on workers in California. That is not credible.

Q. Car Payment for One Vehicle.....(\$757)

R. Mortgage on Non-Residence.....(\$1,100)

S. Real Estate Taxes on Non-Residence.....(\$202)

T. Maintenance on Non-Residence.....(\$ -0-)

U. HOA Dues on Non-Residence.....(\$ 75)

On Amended Schedule A/B, Dckt. 42 at 3–4, Debtor lists the following real properties in which he has an interest:

A. 2599 Walnut Ave., Signal Hill, CA.....\$350,000

Debtor is listed as the sole owner.

B. 128 Terrace Dr., Bastrop, LA.....\$35,000

Debtor lists this as a "SFR Family Inheritance" for which he is the owner of the \$35,000 interest in this property worth \$75,000.

C. 5600 International Blvd, Oakland, CA.....\$483,900.00

Debtor lists this type of property as "COMM", with a total value of \$1,613,100.00. There is at least one other person with an interest in this property. It appears that Debtor claims a one-third interest in this property.

Secured Claims

On Schedule D, Debtor lists Seterus, Inc as having a (\$12,271) claim secured by a "Condo." It is asserted that the "condo" has a value of \$350,000. This appears to be the Signal Hill Property. Dckt. 42 at 13.

Debtor lists Apollo Auto Finance having a (\$1,800) claim secured by an “Automobile” with a value of \$17,000. *Id.* This appears to be the Maserati, which is listed on Schedule A/B as having a value of \$17,000.

Debtor then lists Alameda County Treasurer having a (\$71,053) claim secured by the “COMM” property. *Id.* at 14. This appears to be the 5600 International Blvd, Oakland, CA property. BMD Loan Svc., Inc. is listed as having a (\$58,000) claim secured by the International Blvd Property as well. *Id.*

Finally, Shellpoint Mortgage is listed as having a (\$4,700) claim secured by the “SFR” Property. *Id.* This is the inheritance property in which Debtor lists a one-third interest.

Statement of Financial Affairs

On his Statement of Financial Affairs, Debtor states under penalty of perjury that he had \$6,700 income for January–July 2017, and \$10,300 in 2016 income from employment or business. Statement of Financial Affairs Question 4, Dckt. 42 at 16. Debtor provides no income information for 2015.

Then, Debtor states that he had additional income in the same identical amounts from donations in 2017 and 2016. Statement of Financial Affairs Question 5, *Id.* Debtor provides no income information for 2015.

Though not listed on Schedule A/B, on the Statement of Financial Affairs, Question 27, Debtor states that he did business during the period October 24, 1972, through November 30, 2017, as Saints Rest MBC, Inc., located at 1401 57th Avenue in Oakland, California. *Id.* at 25.

Chapter 13 Plan Filed by Debtor

On February 12, 2018, Debtor filed an Amended Plan, a motion to confirm, a notice of hearing, a proof of service, and a declaration. Dckts. 70–73, 76. The Notice of Hearing does not indicate whether the Motion has been filed under Local Bankruptcy Rule 9014-1(f)(1) or (2), and the Proof of Service does not state what parties have been served. Previously, the Chapter 13 Trustee filed a Notice of Confirmation Procedures that informed Debtor of the pleading deficiencies. Dckt. 36.

The proposed Amended Chapter 13 Plan, ¶¶ 1.01 and 1.02, (Dckt. 73) provides for a \$352.27 per month plan payment for sixty months (less than half of what was proposed previously). No claim is listed in Class 1, even though “CHASE” was identified in the last proposed plan.

For the Class 2 Claims, Debtor lists Apollo Auto Finance, with a \$12,000.00 claim to be paid over sixty months with 10% interest. Using the Microsoft Excel Loan Calculator, the court computes this provided-for claim to require a \$254.96 per month payment through the Plan.

For Class 5, priority unsecured claims, Debtor lists “Bob’s Towing” with a \$7,570.00 claim. If paid over the sixty months of the Plan, with no interest, that would require an additional monthly payment of \$126.17.

4. There are no creditors with secured claims with no defaults that are to be paid directly in Class

No provision is made for the delinquent tax claims or the other claims secured by real property as listed on Schedule D by Debtor.

Additionally, the Motion to Confirm does not state any grounds with particularity (Federal Rule of Bankruptcy Procedure 9013), nor does it reference any of the applicable rules for Chapter 13. In its entirety, the Motion states:

I, Byllie Dee, debtor, hereby petition the Court to confirm debtor's second amended plan that was filed on February 12, 2018.

Debtor is filing this motion in accordance with Local Rule 9014-1, any other applicable Local Rules, and the applicable provisions of 11 U.S.C. §521(i)(3)[.]

Dckt. 70.

The Declaration in support of confirmation provides no testimony, but merely that "I make this declaration in support of the Motion for Confirmation filed by debtor." Dckt. 72.

Other Motions and Proceedings in This Case

On February 15, 2018, this court entered an order authorizing MTGLQ Investors, L.P., and its agents, representative, and successors to exercise its rights to foreclose on the Louisiana Property. Order, Dckt. 81. The relief granted includes prospective relief pursuant to 11 U.S.C. § 362(d)(4). The court's findings of fact and conclusions of law are stated in the Civil Minutes for the hearing on the Motion for relief from the stay. Dckt. 79. The court discusses the plan proposed in this case, as well as Debtor's multiple, non-productive bankruptcy filings in concluding that the grounds for such relief exist.

Motion to Vacate. The same day as the hearing on the above motion for relief from the stay, and prior to the entry of the order granting the relief, Debtor filed a twenty-seven-page Motion to Vacate (combined motion, points and authorities, declaration, exhibits) the order granting relief. Dckt. 80. The Motion itself merely states that the relief should be vacated. In the points and authorities portion of the Motion to Vacate, Debtor asserts:

- A. Debtor did not file an opposition because Shellpoint Mortgage told him that a loan modification would be completed by the February 13, 2018 hearing date.
- B. Debtor was informed that if he made payments on the obligation, then it would cause delay in finalizing the loan modification.

The exhibits include a letter, dated January 30, 2018, acknowledging receipt of a request for a loan modification from Debtor. Exhibit A, Dckt. 80. It states that the required documentation must be provided by March 1, 2018, and then it may take up to thirty days after receipt of all the documents to

respond to the request. Exhibit B and C appear to be documentation that Debtor sent the required information, which consisted only of Debtor's January paystub and letter of employment. These documents are not included as part of the exhibits, but merely the fax cover sheet prepared by Debtor. Debtor includes as exhibits copies of documents from his bankruptcy filings in the Northern District of California.

Debtor did file an opposition to the motion for relief, though he did not bring it to the attention of the court for the February 13, 2018 hearing. Opposition filed on February 12, 2018, Dckt. 74. This Opposition presents an extensive, heavily cited opposition attacking the motion on substantive legal and evidentiary grounds. Unfortunately, Debtor elected to merely file the untimely opposition and not show up to court on February 13, 2018, to oppose the Motion. FN.2.

FN.2. Because Debtor waited until February 12, 2018, to file his extensive legally and factually based opposition, the court could not review it in preparing the rulings. This led to the court posting it the day before as a "final" ruling, unopposed. When posted as a final, the court states "No Appearance Required." The court does not "remove" the matter from the calendar and state "no appearance permitted." If Debtor had such an extensive opposition and had, in good faith, somehow believed that he should not file it, it is the court's experience that such debtors show up in court the day of the hearing in an effort to actively (though belatedly) assert their rights.

On February 12, 2018, Debtor also filed an Objection to the claim of MTGLQ, L.P., Proof of Claim No. 1 filed in December 2, 2017. Objection, Dckt. 75. The Objection asserts: (1) No documentation showing that MTGLQ, L.P. is the holder of the claims; (2) the itemizations are incorrect; (3) no statement of the cure amount is provided; (4) no escrow account statement is attached; (5) there is no writing showing MTGLQ's interest on the property securing the claim; (6) no documentation showing perfection of the security interest is provided; (7) no assignment or transfer of the claim filed by MTGLQ is filed; and (8) the additional fees and expenses are not reasonable. Each of these are with a specific citation to Federal Rule of Bankruptcy Procedure 3001.

No points and authorities, declarations, or other evidence is filed in support of the Objection.

In looking at the Registry of Claims in this case, Proof of Claim No. 1 was not filed by MTGLQ, L.P., but is a proof of claim filed for American Express Centurion Bank for an unsecured claim in the amount of \$4,448.67.

Proof of Claim 7 was filed for MTGLQ Investors, L.P., by Shellpoint Mortgage Servicing, on December 1, 2017. It appears that the reference to the proof of claim number in the Objection may either have been a typographical or handwriting error. Though the Objection makes it sound as if Proof of Claim No. 7 is devoid of documentation, it is a forty-two-page proof of claim. Proof of Claim No. 7 includes;

- A. Amount of Claim.....(\$72,537.55)
- B. Collateral.....128 Terr Dr. Bastrop, LA
- C. Basis for Perfection.....Mortgage

- D. Amount Necessary to Cure Arrearage.....(\$33,172.62)
- E. Exhibit A.....Accounting of Defaulted Payments, Costs, and Expenses constituting cure amount and as part of total claim.
- F. Mortgage Proof of Claim Attachment, Form 410A. Accounting of defaulted payments, additional charges, and payments.

The accounting states that the defaults in the regular monthly payment of \$258.68 dates back to February 2011. Several payments on the loan are reflected on the account during the six-year period reported.

- G. An Annual Escrow Account Disclosure Statement—Account History, dated August 15, 2017, on Shellpoint Mortgage Servicing letterhead.
- H. A Note dated June 14, 2002, signed by James E. Lawson, Jr. As the borrower.
- I. An Allonge to the Mortgage Note transferring it from First Source Lending, LLC to Chase Manhattan Mortgage Corporation. The Allonge is then endorsed in blank by Chase Manhattan Mortgage Corporation. As provided under the Commercial Code, the endorsement in blank renders the note “bearer paper.” See Cal. Comm. § 3205(b) which states, “(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a ‘blank indorsement.’ When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.”
- J. A mortgage to secure the Note, bearing a Clerk’s Stamp and a file number, that was signed by James E. Lawson, Jr. On the signature page of the mortgage, there is a stamp and signature by a notary, and a certification by the Clerk of Morehouse Parish, Louisiana.
- G. An Assignment of Mortgage, from First Source Lending, LLC to Chase Manhattan Mortgage Corporation. This bears the filing stamp of the Clerk for Morehouse Parish.
- H. An Assignment of Mortgage from Chase Manhattan Mortgage Corporation to Federal National Mortgage Association. This does not bear a filing stamp.
- I. A Notarial Endorsement and Assignment of Note and Mortgage from JPMorgan Chase Bank, N.A., as successor to Chase Manhattan Mortgage Corporation, to MTGLQ Investors, L.P. This bears a Clerk of the Court Stamp for Morehouse Parish and a file number.

While complaining of the sparse information in the MTGLQ Investors, L.P. proof of claim, it appears that the documentation is there, unaddressed by Debtor.

Decision

Debtor purports to have substantial real property, a Rolls Royce, and a Maserati, but has been repeatedly unable to prosecute bankruptcy cases. In this case, he fell six months behind in monthly payments, and then in one month produced the reduced amount, without explanation.

Debtor does not appear to be able to prosecute this case in good faith, despite multiple attempts. While stating to the court that he desired legal representation, no attorney has been substituted into this case as Debtor's counsel. He continues to prosecute this case himself, with numerous deficiencies in his pleadings that prevent him from getting a plan confirmed.

Though having past due property taxes on the Oakland Property, no provision is made to cure the arrearage. Though there is an arrearage on the Louisiana Property, no provision is made to cure the arrearage.

On his Petition, Debtor states that he has also used the name James Larson in the past eight years. When checking the court's files for other cases by Byllie Williams, using his Social Security Number, the search does not disclose any other cases.

On his Petition, Debtor states that he has had three prior cases in the last eight years in the Northern District of California—4:16-bk-42054, 4:15-bk-42180, and 4:15-43169. The court discusses these cases in the Civil Minutes for the prior hearing on the Motion. Dckt. 26. After reviewing those cases and Debtor's conduct in this case, the court stated:

“Though Debtor's efforts in this case appear questionable, the court will afford Debtor the opportunity to obtain the counsel which he said he desires. Because of the apparently high value vehicles which are in, or are purported to have transited through, the Debtor and the various bankruptcy estate, the court will consider whether dismissal or conversion is the proper relief to be granted pursuant to this Motion if the Debtor fails in the prosecution of this case in good faith.”

Civil Minutes, p. 4, Dckt. 26.

Cause exists to dismiss this case. While Debtor has enjoyed the benefits of bankruptcy in multiple cases, in multiple districts, he has shown he cannot prosecute a case as required under the Bankruptcy Code. Though preparing an extensive legal and factual opposition (due to its length and detail, it could not have been prepared after Debtor learned of the tentative ruling posted the day before the February 13, 2018 hearing on the motion for relief), Debtor waited to file it until the day before the hearing, and then have in hand an extensive motion to vacate, with a legal points and authorities that would rival many attorneys. This appears to be a lying-in-wait strategy intended to delay prosecution of the case and deflect any judicial determination of the parties rights.

The Motion is granted, and the case is dismissed.

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

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

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

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

FINAL RULINGS

16. [16-25290](#)-E-13 DANA STAHR MOTION TO DISMISS CASE
DPC-1 John Sargetis 2-21-18 [33]

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 15, 2018, Dckt. 39; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Dana Stahr (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 39, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on February 5, 2018. By the court's calculation, 44 days' notice was provided. The court set the hearing for March 21, 2018. Dckt. 90.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

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.

Linda Huss ("Debtor") filed this Motion *in pro se* on February 5, 2018. Debtor seeks to dismiss this case to overcome a fatal flaw to successful prosecution from selling real property without court approval. Debtor does not appear to appreciate that mere dismissal will not resolve an invalid sale.

On February 22, 2018, the court entered an order setting this Motion for hearing at 10:00 a.m. on March 21, 2018, and the court ordered Debtor to file a Notice of Hearing by February 28, 2018. Dckt. 90. Debtor failed to do so.

On February 28, 2018, Kristy Hernandez was substituted into this case as the attorney of record. Dckt. 92. A motion to approve the unauthorized sale retroactively was filed on March 5, 2018, and a motion to confirm an amended plan is pending and set for confirmation hearing on April 17, 2018. Dckts. 93, 98. Debtor no longer appears to want this case dismissed as she appeared to when she was prosecuting *in pro se*.

Debtor's subsequent acquisition of new counsel and the filing of motions that indicate that Debtor wants to prosecute this case after all, 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 Linda Huss (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18.	<u>17-25627</u> -E-13 DPC-1	LINDA HUSS Kristy Hernandez	MOTION TO CONVERT CASE TO CHAPTER 7 2-20-18 <u>[83]</u>
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Final Ruling: No appearance at the March 21, 2018 hearing is required.

The Motion to Convert Case is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 8, 2018, Dckt. 106; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Linda Huss (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Convert Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 106, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 20, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Larry Vincelli ("Debtor") is \$2,842.82 delinquent in plan payments, which represents multiple months of the \$1,123.98 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 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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David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 13, 2018, Dckt. 101; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Lance McKinney and Lisa McKinney (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 101, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

21. [18-20003](#)-E-13 JAMES ZAMMIELLO
Hank Walth

ORDER TO SHOW CAUSE—FAILURE
TO PAY FEES
2-6-18 [\[27\]](#)

Final Ruling: No appearance at the March 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 8, 2018. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on February 1, 2018.

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

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

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 20, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Timothy Sullivan and Mary Sullivan (“Debtor”) are \$2,839.20 delinquent in plan payments, which represents multiple months of the \$2,890.11 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on March 6, 2018. Dckts. 41, 45. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 41, 43. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

23. [17-23911](#)-E-13 **CRAIG MASON** **CONTINUED MOTION TO DISMISS**
DPC-1 **Lucas Garcia** **CASE**
12-4-17 [[50](#)]

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 4, 2017. By the court’s calculation, 44 days’ notice was provided. 28 days’ notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 3:00 p.m. on April 24, 2018.</p>

David Cusick’s (“the Chapter 13 Trustee”) Motion argues that Craig Mason (“Debtor”) did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on October 17, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on December 8, 2017. Dckts. 54, 56. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 54, 57. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

CHAPTER 13 TRUSTEE’S RESPONSE

The Chapter 13 Trustee filed a Response on January 9, 2018. Dckt. 66. The Chapter 13 Trustee notes that an Amended Plan has been filed, and he informs the court that he has filed opposition to its confirmation.

JANUARY 17, 2018 HEARING

At the hearing, the court continued this matter to 10:00 a.m. on March 21, 2018, to allow time for Debtor to propose an amended plan on the correct plan form. Dckt. 68.

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 84. Debtor argues that an Amended Plan has been filed and set for a confirmation hearing on April 24, 2018, that will resolve the grounds raised in the Motion to Dismiss.

CHAPTER 13 TRUSTEE'S REPLY

The Chapter 13 Trustee filed a Reply on March 9, 2018. Dckt. 86. The Chapter 13 Trustee notes that he intends to object to the proposed amended plan, and he requests that this Motion either be granted or that it be continued to April 24, 2018, to be heard in conjunction with the motion to confirm. He notes that Debtor is current with plan payments.

RULING

A review of the Amended Plan shows that it is based upon the current plan form, but the Chapter 13 Trustee notes that it may not be confirmable and that dismissal of this case may be appropriate still. Rather than continue this hearing until the next dismissal calendar at the end of May 2018, the court continues the hearing to 3:00 p.m. on April 24, 2018, specially set with the court's Chapter 13 law and motion calendar.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on April 24, 2018.

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 12, 2018, Dckt. 41; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Brian Moran and Sonja Moran (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 18, 2017. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Latrice Hatcher and Michael Hatcher (“Debtor”) did not commence making plan payments and are \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

JANUARY 17, 2018 HEARING

At the hearing, Debtor appeared and stated they do not want the case dismissed, they had been communicating with their counsel, and they desired to speak with counsel further. Dckt. 26. The court continued the hearing to 10:00 a.m. on February 21, 2018. Dckt. 27.

FEBRUARY 21, 2018 HEARING

At the hearing, Debtor appeared and presented concerns about ongoing communication with counsel. Dckt. 30. Debtor did not understand changes in case strategy, and Debtor reported that work

income has increased to allow funding a modified plan that cures arrears. The court continued the hearing to 10:00 a.m. on March 21, 2018. Dckt. 31.

DECLARATION OF DEBTOR'S COUNSEL

Debtor's Counsel filed a Declaration on March 14, 2018. Dckt. 32. Debtor's Counsel explains how he, Debtor, and Peter Macaluso have been communicating over the past couple of months while this matter has been continued at Debtor's request. He explains that Debtor has informed him that she will be hiring Mr. Macaluso as her counsel in this case, substituting for Mr. Keenan.

Additionally, Debtor's Counsel reports that he has offered to draft an amended plan, but Debtor has refused.

RULING

The argument presented to the court by Debtor's Counsel is that Debtor intends to present an amended plan with different counsel in this case. Unfortunately for Debtor, neither a substitution motion nor an amended plan have been filed. There is no evidence that Debtor has paid any amount into this case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

26. [16-25419](#)-E-13 ANTHONY/AMALIA AITKEN CONTINUED MOTION TO DISMISS
DPC-3 Bruce Dwiggins CASE
12-19-17 [\[71\]](#)

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on January 19, 2018, Dckt. 82; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Anthony Aitken and Amalia Aitken (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 82 (for the Withdrawal), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 8, 2018, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Richard Arroyo (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 24, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Meiko Hill ("Debtor") did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

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

The Chapter 13 Trustee reports that Debtor failed to disclose on the petition the following nine prior bankruptcy cases:

- A. Case No. 02-25474
- B. Case No. 02-28692
- C. Case No. 13-28274
- D. Case No. 13-34888
- E. Case No. 14-28169
- F. Case No. 14-29538

- G. Case No. 17-24459
- H. Case No. 17-23538
- I. Case No. 17-25291

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p. 3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, or districts. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

FEBRUARY 21, 2018 HEARING

At the hearing, Peter Macaluso appeared and stated that he would be substituting into the case as Debtor's counsel. Dckt. 32. Having obtained experienced counsel, the court continued the hearing to 10:00 a.m. on March 21, 2018, to allow Debtor an opportunity to prosecute the case. Dckt. 36.

RULING

No further pleadings have been filed in this case since the February 21, 2018 hearing. Debtor does not appear earnest in prosecuting this case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 21, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Alvin Catlin ("Debtor") is \$10,869.01 delinquent in plan payments, which represents multiple months of the \$5,495.11 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

30. [17-27931](#)-E-13 CHARLENE LINDAUER
MACALUSO
Pro Se

ORDER TO SHOW CAUSE—FAILURE
TO PAY FEES
2-8-18 [\[28\]](#)

Final Ruling: No appearance at the March 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 10, 2018. The court computes that 39 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 February 5, 2018.

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

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

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 14, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Brandon Heaton ("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 December 19, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

32. [17-26735](#)-E-13 **GEORGE ALM** **MOTION TO DISMISS CASE**
DPC-3 **Robert Huckaby** **2-20-18 [54]**

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 20, 2018. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“The Chapter 13 Trustee”) argues that George Alm (“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 December 12, 2017. 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 Chapter 13 Trustee also notes that he received a copy of a “Making Home Affordable” Application dated January 5, 2018, but he has not received any further documentation. Nationstar Mortgage filed a proof of claim indicating mortgage arrears of \$51,713.70 and monthly payments of \$1,947.21. Schedule J, however, lists monthly payments of \$1,909.00, and Schedule A/B shows cash on hand of \$6,404.00. The Chapter 13 Trustee argues that the mortgage arrears date back to October 2015, which means that there should be cash on hand of \$53,000.00 to cover the arrears, but Debtor does not show that amount.

Finally, the Chapter 13 Trustee argues that this case was filed in bad faith because Debtor has repeatedly mischaracterized the debt owed to Nationstar or has improperly tried to modified Nationstar's secured claim.

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

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

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

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

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

33.	<u>14-29137-E-13</u> DPC-5	ROQUE DELAROSA Peter Macaluso	MOTION TO DISMISS CASE 2-21-18 <u>[23]</u>
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Final Ruling: No appearance at the March 21, 2018 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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David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Motion on March 16, 2018, Dckt. 31; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Roque Delarosa ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick ("the Chapter 13 Trustee") having been presented to the court, the Chapter 13 Trustee

having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 31, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

34. [15-21739](#)-E-13 **MILDRED/DAVID PRIEGO** **MOTION TO DISMISS CASE**
 DPC-1 Sally Gonzales 2-20-18 [[41](#)]

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

35. [14-25350](#)-E-13 **MATTHEW O'DONNELL AND** **MOTION TO DISMISS CASE**
DPC-2 **JANICE VALDEZ O'DONNELL** **2-20-18 [55]**
 Michael Croddy

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 20, 2018. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Matthew O'Donnell and Janice O'Donnell ("Debtor") are \$2,683.00 delinquent in plan payments, which represents multiple months of the \$1,344.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

36. [18-20453](#)-E-13 LLOYD/CLARITA EDWARDS ORDER TO SHOW CAUSE—FAILURE
Marc Carpenter TO PAY FEES
3-5-18 [16](#)

Final Ruling: No appearance at the March 21, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on March 7, 2018. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on February 28, 2018.

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

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

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

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

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

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

37. [13-27154](#)-E-13 **DENNIS/PATRICIA WHITCOMB** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **2-20-18 [76]**

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

38. [14-28961](#)-E-13 **RODEL MAULINO AND MIMSY** **MOTION TO DISMISS CASE**
DPC-4 **ABARA-MAULINO** **2-20-18 [100]**
 Mitchell Abdallah

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 8, 2018, Dckt. 107; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Rodel Maulino and Mimsy Abara-Maulino (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 107, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

39. [15-24266](#)-E-13 **GLORIA WELLINGTON** **CONTINUED MOTION TO DISMISS**
DPC-2 **Peter Macaluso** **CASE**
12-15-17 [45]

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 15, 2017. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 30, 2018.</p>
--

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Gloria Wellington ("Debtor") is \$5,200.00 delinquent in plan payments, which represents multiple months of the \$2,600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 3, 2018. Dckt. 49. Debtor promises to cure the delinquency before the hearing date.

JANUARY 17, 2018 HEARING

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

DEBTOR'S SUPPLEMENTAL REPLY

Debtor filed a Supplemental Reply on March 7, 2018. Dckt. 54. Debtor's counsel reports that Debtor passed away on January 27, 2018, and that a Notice of Death was filed on March 1, 2018. Debtor's counsel reports that Debtor's family wishes additional time to meet with counsel to discuss further administration of the case.

CHAPTER 13 TRUSTEE'S RESPONSE

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

RULING

Debtor's counsel has reported Debtor's death and has relayed that additional time would be beneficial to Debtor's family to decide how to best proceed with administration of this case. Even though Debtor's family and counsel have had nearly two months to discuss any options, the court will grant the continuance this one time. The hearing on the Motion is continued to 10:00 a.m. on May 30, 2018.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 30, 2018.

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 21, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Ronald Grassi ("Debtor") is in material default under the Plan because the Plan will complete in sixty-six months because Debtor has proposed to pay 100% of general unsecured claims, but they were filed greater than scheduled, particularly a student loan debt. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to complete the Plan within sixty months puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1322(d).

The Chapter 13 Trustee seeks dismissal of the case on the basis that Debtor is \$2,500.00 delinquent in plan payments, which represents one month of the \$2,500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

41. [16-23279-E-13](#) **SANDRA PENNIX** **MOTION TO DISMISS CASE**
DPC-5 **Michael Benavides** **2-21-18 [57]**

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 21, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) argues that Sandra Pennix (“Debtor”) is in material default under the Plan because the Plan will complete in sixty-five months because priority claims were filed greater than scheduled. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to complete the Plan within sixty months puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1322(d).

The Chapter 13 Trustee seeks dismissal of the case on the basis that Debtor is \$669.00 delinquent in plan payments, which represents one month of the \$669.00 plan payment. Before the hearing, another

plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

42.	<u>17-25480</u> -E-13 DPC-4	MITCHELL LOGAN Lucas Garcia	MOTION TO DISMISS CASE 2-14-18 <u>[52]</u>
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Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on February 14, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Mitchell Logan, Jr. (“Debtor”) is \$2,250.00 delinquent in plan payments, which represents multiple months of the \$750.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); 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 David Cusick (“the Chapter 13 Trustee”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

43.	<u>15-28983</u> -E-13 DPC-3	MANUEL/VIRGINIA MADRID Matthew Grech	CONTINUED MOTION TO DISMISS CASE 12-15-17 <u>[60]</u>
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Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on March 14, 2018, Dckt. 91; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Manuel Madrid and Virginia Madrid (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 91, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

44.	<u>16-25884</u> -E-13 DPC-1	GLORIA RANNALS Scott Hughes	CONTINUED MOTION TO DISMISS CASE 1-19-18 <u>[55]</u>
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Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on January 19, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Gloria Rannals (“Debtor”) is \$290.00 delinquent in plan payments, which represents one month of the \$290.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 7, 2018. Dckt. 59. Debtor promises to cure the delinquency before the hearing date.

FEBRUARY 21, 2018 HEARING

At the hearing, Debtor reported that she would be receiving money from Social Security and would have the plan payments current by the end of February. The Chapter 13 Trustee concurred to a continuance. Dckt. 61. The court continued the hearing to 10:00 a.m. on March 21, 2018.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. No further pleadings have been filed to show that the 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 David Cusick ("the Chapter 13 Trustee") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 14, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Ricardo Sanchez ("Debtor") did not commence making plan payments and is \$4,963.00 delinquent in plan payments, which represents one month of the \$4,963.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee argues that Debtor did not 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).

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015 and 2016 tax years have not been filed still. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

DEBTOR'S RESPONSE

Debtor filed a Response on March 6, 2018. Dckt. 38. Debtor states that he has no basis to oppose the Chapter 13 Trustee's Motion to Dismiss.

RULING

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

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

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

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

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

46.	<u>17-25491</u> -E-13 DPC-2	KATHLEEN HILL George Burke	CONTINUED MOTION TO DISMISS CASE 12-7-17 <u>[35]</u>
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Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on December 7, 2017. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Kathleen Hill (“Debtor”) did not commence making plan payments and is \$2,925.00 delinquent in plan payments, which represents multiple months of the \$975.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on November 21, 2017. 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).

JANUARY 17, 2018 HEARING

At the hearing, the Chapter 13 Trustee agreed to a continuance to afford Debtor and her counsel time to address the issues further. The court continued the hearing to 10:00 a.m. on March 21, 2018. Dckt. 41.

CHAPTER 13 TRUSTEE’S STATUS UPDATE

The Chapter 13 Trustee filed a Status Update on March 9, 2018. Dckt. 45. He reports that Debtor is now delinquent \$5,850.00 in plan payments and that there is no plan pending for confirmation.

RULING

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

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

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

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

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

Final Ruling: No appearance at the March 21, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 21, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is denied without prejudice.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Jennifer Borba ("Debtor") is \$3,374.00 delinquent in plan payments, which represents multiple months of the \$1,231.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on February 22, 2018. Dckt. 39. Debtor promises to cure the delinquency by making a partial payment and filing a modified plan. Debtor explains she has experienced a prolonged overall decrease in her income since April 2017, as she has gone on temporary disability. These disability benefits have been extended until June or July of 2018 since Debtor has become pregnant and will not give birth until about May 17, 2018. Debtor also notes that her husband was approved for a disability pension through the Department of Veteran's Affairs and will receive \$1,039.41 per month for the foreseeable future.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on February 26, 2018. Dckts. 42, 44. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 42, 45. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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