

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

March 29, 2017, at 10:00 a.m.

1. <u>13-34801</u> -E-13 DPC-2	ESTHER HWANG Eric Gravel	MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE TO CHAPTER 7 3-10-17 [<u>73</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 10, 2017. 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 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 or Convert is granted, and the case is converted to Chapter 7.

The Trustee argues that Debtor is in material default under the Plan because Debtor failed to report interests acquired or arising after the petition, in violation of Federal Rule of Bankruptcy Procedure 1007(h), and Debtor conveyed property contrary to Local Bankruptcy Rule 3015-1(i)(1).

March 29, 2017, at 10:00 a.m.

The Trustee reports that Debtor has received an interest in at least four real properties, and her interest in real property at Macabee Lane, Elk Grove, California, has increased. Additionally, the Trustee states that Debtor has deeded or quitclaimed her interest in various real property.

Specifically, the Trustee pleads the following grounds based upon Debtor's declaration (Dckt. 71) and his own investigation:

- A. Debtor does not mention a sale of 8873 Monterey Oaks Drive, Elk Grove, California, that appears to have been sold for \$394,335.00 on November 10, 2015.
- B. At the January 6, 2017 examination, Debtor provided tax form 1099-S, which reports Debtor's transfer of 8873 Monterey Oaks Drive, Elk Grove, California, on November 10, 2015, for \$0.00.
- C. On February 20, 2015, an Affidavit of Death of Joint Tenant was filed and increased Debtor interest in 9987 Macabee Lane, Elk Grove, California, from 33.33% to 50.00%, and Debtor subsequently attempted to sell the property and exempt \$24,747.28.
 - 1. The Trustee objected, and Debtor withdrew her motion.
- D. On May 28, 2015, Debtor received a joint tenancy interest in 2728 W Pintail Way, Elk Grove, California, which she then quitclaimed to Henry Baba on July 12, 2016, and the property was subsequently sold on September 28, 2016, for \$663,998.00.
- E. On November 16, 2015, Debtor received a joint tenancy interest in 106 Northcreek Circle, Walnut Creek, California, and the property appears to have been purchased on November 23, 2015.
- F. On March 10, 2016, 1 Playa Court, Hercules, California, was sold for \$350,000.00, and afterward on May 31, 2016, Debtor gifted her interest in the property to Henry Baba.

The Trustee alleges that Debtor appears to have deeded her interest in properties by quitclaim after the Trustee filed a response to Debtor's motion to sell.

The Trustee also notes that Debtor's current liquidation analysis demonstrates that there is non-exempt equity of at least \$280,088.76 with unsecured claims of \$168,095.37. Debtor's plan pays a 2% dividend to unsecured claims. Additionally, Debtor's amended Schedules I and J show income from "outside support" of \$2,982.55 and expenses of \$2,975.55, leaving a net of \$7 per month.

The Trustee states that Debtor has no regular income to support herself or a Chapter 13 plan absent gifts from third parties, and her current finances do not provides as much to creditors as they would receive in Chapter 7.

Based upon the presented grounds ,the Trustee requests that the court either dismiss this case or convert it to Chapter 7.

DISCUSSION

Section 5.02 of the Plan makes the failure to report interest in property and the unauthorized sale of property breaches of the Plan in addition to violating the Bankruptcy Code. Those failures put Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause
. . . .

11 U.S.C. § 1307(c). The court engages in a “totality-of circumstances” test, weighing facts on a case-by-case basis determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

In this case, the Trustee has demonstrated that Debtor does not have the financial means to provide for creditors’ full claims. Debtor’s plan provides for a 2% dividend to unsecured claims, but through Chapter 7, it appears that Debtor would have non-exempt equity in the amount of \$267,500.00 and would be able to provide for all unsecured claims. The Trustee relays that Debtor was cooperative with his investigation, but despite knowing of the Trustee’s concerns, Debtor has not opposed this Motion. The court finds that the best interest of creditors is to convert this case to one under Chapter 7 to more fully provide for their claims.

Cause exists to convert this case. The Motion is granted, and the case is converted to one under Chapter 7.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee 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 or Convert is granted, and the case is converted to one under Chapter 7 of Title 11, United States Code.

2. [17-20601](#)-E-13 **DENNIS/IRENE SINGH** **MOTION TO DISMISS CASE**
DPC-2 **Scott Hughes** **3-10-17 [21]**

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 10, 2017. 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 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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The Trustee argues that Debtor did not commence making plan payments and is \$4,565.00 delinquent in plan payments (with another \$4,565.00 coming due before the hearing), which represents one month of the \$4,565.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

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

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

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

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

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

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

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

3.

[15-29002-E-13](#)
DPC-2

ROBERT CLIFF
Scott Hughes

MOTION TO DISMISS CASE
3-1-17 [\[54\]](#)

Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Debtor is \$7,500.00 delinquent in plan payments (with another \$2,500.00 coming due before the hearing), which represents multiple months of the \$2,500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

4. [16-27603](#)-E-13 **CHRISTINE MCKAY** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **3-10-17 [68]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

5. [16-21305](#)-E-7 **RODERICK/ROSEMARIE TAPNIO** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **2-27-17 [156]**
CASE CONVERTED: 02/08/2017

Final Ruling: No appearance at the March 29, 2017 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*), Debtor's Attorney, and Office of the United States Trustee on February 27, 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.

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. Debtor filed a Notice of Conversion on February 7, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 138. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637,

638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on February 7, 2017. *McFadden*, 37 B.R. at 521.

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

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

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

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

6. [16-27508](#)-E-13 **TARILYN ELLIOTT**
 Marc Carpenter

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-17-17 [\[54\]](#)**

CASE DISMISSED: 02/28/2017

Final Ruling: No appearance at the March 29, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 19, 2017. The court computes that 38 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on February 22, 2017 (Dckt. 58), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

7. [13-24610](#)-E-13 **DAX/TINA CHAVEZ** **MOTION TO DISMISS CASE**
DPC-6 **Peter Macaluso** **3-1-17 [157]**

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 March 1, 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).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Dax Chavez and Tina Chavez ("Debtor") is \$8,320.00 delinquent in plan payments (with another \$2,780.00 coming due before the hearing), which represents multiple months of the \$2,780.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

CREDITOR'S JOINDER

U.S. Bank National Association, as Indenture Trustee on Behalf of and with Respect to Ajax Mortgage Loan Trust 2016-B Mortgage-Backed Notes, Series 2016-B AJX Mortgage Trust I ("Creditor") filed a Notice of Joinder to the Motion on March 13, 2017. Dckt. 167. Creditor asserts that in addition to dismissing the case, the court should bar Debtor from refile for bankruptcy for a period of 180 days because Debtor failed to inform and turn over to the Trustee additional income in the form of a \$916.22 check that Ameriprise Auto and Home sent to Debtor as a refund of Creditor's insurance payment on Debtor's property.

Federal Rule of Bankruptcy Procedure 9014(c) incorporates various adversary proceeding rules from Part VII into contested matters, but the rules governing joinder are not among them. While joinder of claims is used in adversary proceedings, it "presumptively does not apply in other bankruptcy matters." 10 COLLIER ON BANKRUPTCY ¶ 7018.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Creditor has

not cited the court to any supporting statutory, caselaw, or academic authority to support its position that it may file a joinder in this matter.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 15, 2017. Dckt. 171. Debtor states that a modified plan and corresponding motion to confirm will be filed, set, and served before the hearing. A review of the docket shows that a modified plan has not been filed.

TRUSTEE'S SUPPLEMENT TO THE MOTION

The Trustee filed a Supplement to the Motion on March 15, 2017. Dckt. 176. The Trustee states that the delinquency amount listed in the Motion does not include any delinquency based on a higher mortgage payment that may arise if the court overrules Debtor's Objection to Notice of Mortgage Payment on March 21, 2017.

DEBTOR'S REPLY

Debtor filed a Reply on March 22, 2017. Dckt. 179. Debtor promises once again to file, set, serve, and be current under a modified plan. Debtor requests that the court allow Debtor additional time to file the modified plan for it to reflect the court's March 21, 2017 ruling on Debtor's Objection to Notice of Mortgage Payment Change.

A review of the docket shows that a modified plan has not been filed. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 27, 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). 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* / *denied*.

The Trustee argues that Paul Fernandes ("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 January 10, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,900.00 delinquent in plan payments (with another \$2,900.00 coming due before the hearing), which represents one month of the \$2,900.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on March 15, 2017. Dckt. 67. Debtor states that an amended plan will be filed and served before the hearing. Debtor also reports that a plan payment of \$2,900.00 was mailed to the Trustee on February 28, 2017.

A review of the docket shows that while an amended plan has been filed, no corresponding motion to confirm has been filed. At the hearing, the Trustee reported that the delinquency *has* / *has not* been cured and that Debtor *has* / *has not* paid the March 25, 2017 plan payment.

Accordingly, the Motion is *granted* / *denied*.

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

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

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

IT IS ORDERED that the Motion to Dismiss is **granted / denied**.

9. **16-27411-E-13** **TERRY ARNOLD** **MOTION TO DISMISS CASE**
 DPC-1 **Scott Shumaker** **3-1-17 [24]**

Final Ruling: No appearance at the March 29, 2017 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 March 1, 2017. FN.1. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

FN.1. The court notes that the Certificate of Service states that it was served on March 27, 2017, but it and the related documents for this Motion were executed and filed on March 1, 2017. Given that the Motion was filed according to Local Bankruptcy Rule 9014-1(f)(1) that requires twenty-eight days' notice, which deadline was March 1, 2017, the court interprets the reference to March 27, 2017, as a scrivener's error. The court treats service as having occurred on March 1, 2017.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$14,151.00 delinquent in plan payments (with another \$4,717.00 coming due before the hearing), which represents multiple months of the \$4,717.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

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

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

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

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

10.	<u>16-27511</u> -E-13 DPC-2	ALMA CHAVEZ-NUNEZ John Downing	CONTINUED MOTION TO DISMISS CASE 1-24-17 <u>18</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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 24, 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee seeks dismissal of the case on the basis that:

- A. Alma Chavez-Nunez (“Debtor”) is \$1,000.00 delinquent;
- B. Debtor failed to appear at the First Meeting of Creditors; and
- C. Debtor failed to provide all business documents.

UNITED STATES’S SUPPORT OF TRUSTEE’S MOTION

The United States, on behalf of the Internal Revenue Service (“IRS”), filed an Objection to Confirmation of Plan on January 31, 2017. Dckt. 22. The IRS joins the Trustee’s Objection and adds that Debtor has failed to file pre-petition tax returns as required by 11 U.S.C. § 1308. Additionally, the IRS’s asserted claim causes Debtor to exceed the debt limit of 11 U.S.C. § 109(e).

DEBTOR’S DECLARATION

Debtor filed a Declaration on February 8, 2017. Dckt. 26. Debtor states that she has been dealing with several personal matters, including injuries from a vehicle collision on October 18, 2016; the death of her sister on January 6, 2016; and the illness of her elderly father, who was hospitalized recently. Debtor states that she missed the Meeting of Creditors because of her sister’s death, and she plans on attending the continued Meeting of Creditors on February 9, 2017. She also states that she has provided all the required business documents to the Trustee. Debtor states that she has now filed the 2014 and 2015 income tax returns. Finally, Debtor intends to pay \$2,000.00 in plan payments at the Meeting of Creditors on February 9, 2017.

FEBRUARY 22, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on March 29, 2017, to afford Debtor the opportunity to obtain the necessary professionals to address her tax issues and to present the court with accurate financial information and actively prosecute this case. Dckt. 36.

TRUSTEE’S STATUS UPDATE

The Trustee filed a Status Update on February 27, 2017. Dckt. 33. The Trustee notes that the IRS supports dismissing this case, and the Trustee reports that Debtor is delinquent \$1,000.00 in plan payments, appeared at the Meeting of Creditors, provided all required business documents, and provided copies of tax returns for 2014 and 2015.

DISCUSSION

The Trustee’s and IRS’s objections are well-taken.

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,000.00 delinquent in plan payments, which represents one month of the \$1,000.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee reports that Debtor and counsel appeared at the continued First Meeting, which has now been concluded. February 10, 2017 Docket Entry Report.

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

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

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

The Trustee having concluded the First Meeting, this indicates that the Trustee was provided with the above documents.

The IRS states that Debtor failed to file pre-petition federal income tax returns. 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).

The IRS alleges that Debtor does not qualify for Chapter 13 treatment because the debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe “on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200.” Debtor’s Schedules plus the IRS’s claim (the unsecured portion of \$5,745,427.64 by itself exceeding the limit) indicate that Debtor exceeds the Code’s unsecured debt limit.

Debtor’s Declaration addresses four of the five grounds that have been alleged for dismissal of this case. As to the Meeting of Creditors, the Trustee’s Report of February 10, 2017, indicates that Debtor appeared. There is no discussion on the docket, though, of whether Debtor has cured the delinquency and filed all tax returns. Additionally, Debtor has not addressed the United States’s ground that she exceeds the debt limit of 11 U.S.C. § 109(e).

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

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

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

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

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

11. [16-24717-E-13](#) **GEORGE ALM** **MOTION TO DISMISS CASE**
DPC-3 **Robert Huckaby** **2-27-17 [66]**

Final Ruling: No appearance at the March 29, 2017 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 27, 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>
--

The 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 January 10, 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [15-25720-E-13](#) **STEPHANIE BRECKENRIDGE** **MOTION TO DISMISS CASE**
DPC-2 **Matthew DeCaminada** **3-1-17 [60]**

Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,328.00 delinquent in plan payments (with another \$747.00 coming due before the hearing), which represents multiple months of the \$747.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

13.	<u>16-24223</u> -E-13 DPC-1	JANACE LIPPI Michael Benavides	MOTION TO DISMISS CASE 3-1-17 <u>[42]</u>
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Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$16,623.79 delinquent in plan payments (with another \$4,601.40 coming due before the hearing), which represents multiple months of the

\$4,601.40 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

14. 16-27723-E-13 DARRYL/BRIDGETTE MERRITT CONTINUED ORDER TO SHOW
Pro Se CAUSE - FAILURE TO PAY FEES
1-25-17 [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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 27, 2017. The court computes that 26 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 January 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 subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

DEBTOR'S MOTION

Darryl Merritt and Bridgette Merritt ("Debtor") filed a Motion on February 9, 2017, requesting that all February hearings in this case be continued so that Debtor "can have time to hire affordable counsel" and decide whether to "move forward with this case or ask[] for it to be dismissed." The court notes that no proof of service has been filed with the supplemental *ex parte* motion.

The court notes that Debtor has filed, jointly and individually, twelve bankruptcy cases since 2010, all of which have been dismissed. In the current case, the court issued an order granting relief from the automatic stay to allow a person to take state court action to recover possession of real property from Debtor. Order, Dckt. 55.

FEBRUARY 22, 2017 HEARING

At the hearing, the court took Debtor at their word that the request for a continuance was to obtain counsel and make an informed decision on exercising their bankruptcy rights, and not merely for purposes of delay. Dckt. 60. The court continued the hearing on the matter to 10:00 a.m. on May 31, 2017.

FEBRUARY 28, 2017 ORDER

On February 28, 2017, the court issued an order changing the continued hearing date to 10:00 a.m. on March 29, 2017. Dckt. 67.

Debtor has not filed any pleadings since the February 22, 2017 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 26, 2017. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on February 21, 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. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

16. [14-28627-E-7](#) **PHILIP/FRANCESCA O'REILLY** **MOTION TO DISMISS CASE**
DPC-1 **Douglas Jacobs** **2-27-17 [28]**
CASE CONVERTED: 12/21/2016
WITHDRAWN BY M.P.

Final Ruling: No appearance at the March 29, 2017 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 27, 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.

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. Debtor filed a Notice of Conversion on December 21, 2016, however, converting the case to a proceeding under Chapter 7. Dckt. 21. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on December 21, 2016. *McFadden*, 37 B.R. at 521.

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

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

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

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

17. [16-27632](#)-E-13 **CHARLES JACKSON AND** **MOTION TO DISMISS CASE**
DPC-3 **PAMELA JACKSON** **3-10-17 [59]**
Paul Bains

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

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 10, 2017. 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$3,161.24 delinquent in plan payments (with another \$6,163.08 coming due before the hearing), which represents less than one month of the \$6,163.08 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

18. [13-26633](#)-E-13 **JAUIRE/PAMELA WELSH** **MOTION TO DISMISS CASE**
DPC-1 Karen Ehler 2-27-17 [[31](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on March 13, 2017, Dckt. 35; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 117 & 119. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

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

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

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

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

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

Final Ruling: No appearance at the March 29, 2017 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 27, 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>
--

The Trustee argues that Debtor did not commence making plan payments and is \$19,476.00 delinquent in plan payments (with another \$6,492.00 coming due before the hearing), which represents multiple months of the \$6,492.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

The 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 14, 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

21. [16-20743-E-13](#) ANNA PETERSON MOTION TO DISMISS CASE
DPC-3 Ronald Holland 3-1-17 [[100](#)]

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 22, 2017, Dckt. 105; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the payments made by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 105, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

22. [16-26844](#)-E-13 ANGELA ALFARO
Michael Benavides

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-16-17 [25](#)**

Final Ruling: No appearance at the March 29, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 18, 2017. 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: \$51.00 due on February 13, 2017.

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 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,997.00 delinquent in plan payments (with another \$999.00 coming due before the hearing), which represents multiple months of the \$999.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 13, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

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

DEBTOR'S OPPOSITION

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

JANUARY 18, 2017 HEARING

At the hearing, the Trustee reported that the default was \$3,011.00. Dckt. 80. Debtor argued that paychecks from January 20, 2017, would be used to pay the remaining delinquency. The court continued the hearing on the matter to 10:00 a.m. on March 29, 2017.

No party has filed additional pleadings indicating 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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25.	<u>16-26349-E-13</u> DPC-2	RICARDO VEGA Peter Macalsuo	CONTINUED MOTION TO DISMISS CASE 2-7-17 [43]
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Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 6, 2017, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

26.	<u>16-28049</u> -E-13	ARMANDO RODRIGUEZ Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 2-9-17 [<u>36</u>]
CASE DISMISSED: 02/28/2017			

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 11, 2017. The court computes that 46 days' notice has been provided.

The Order to Show Cause is discharged as moot.

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

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,

March 29, 2017, at 10:00 a.m.
- Page 32 of 73 -

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 14, 2017, Dckt. 37; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 37, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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 1, 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).

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

The Trustee argues that Walter Allen ("Debtor") is in material default under the Plan because it will complete in eighty-three months with the current 100% dividend owed to unsecured claims. The general unsecured claims filed are \$12,530.51 greater than scheduled. Section 5.03 of the Plan makes that failure to timely complete the Plan a breach in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 6, 2017. Dckt. 34. Debtor states that he has filed a modified plan to account for the excess unsecured claims and that a motion to confirm that plan has been set for hearing on April 18, 2017.

REVIEW OF MODIFIED PLAN AND CORRESPONDING PLEADINGS

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 37 & 39.

The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity). However, the Declaration fails to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602. Some of the more significant deficiencies in the Declaration and lack of testimony by Debtor are:

- A. Debtor has no knowledge as to what changes are in the Plan and why it was filed. She only is “informed and believes,” and thereon “alleges.” Debtor does not provide any testimony in Part A of the “declaration.” Plan, p. 1:24–28, 2L1–4; Dckt. 39.
- B. In Part B of the “declaration,” Debtor again can only be “informed and believes,” stating no personal knowledge for which she can testify. To the extent she is “informed and believes,” it is solely based on “information” from her attorney. *Id.*, p. 2:3–5.
- C. Debtor, purporting to testify under penalty of perjury:
 - 1. Provides the court with her legal opinion that the Plan complies with all of the provisions of Chapter 13 and the Bankruptcy Code. She further purports to provide her legal opinion that the Plan complies with all applicable non-bankruptcy law. *Id.*, p. 2:5–9.
 - 2. By her personal finding of fact, the Plan meets the Chapter 7 Liquidation Test.” Other than stating her personal finding of fact, Debtor fails (or is unable) to provide any personal knowledge testimony as to the assets and liabilities in this case. *Id.*, p. 12–17.
 - 3. That she has no idea how the secured claims are provided for under the Plan, with Debtor merely parroting the statutory alternative methods of providing for secured claims in the Plan. *Id.*, p. 2:18–28, 3:1–6.

Though this Plan provides for a 100% dividend on general unsecured claims, the court notes that the financial information provided by Debtor is now almost two years old. Debtor failing (or refusing) to provide any actual personal knowledge testimony and demonstrating a lack of any knowledge of what his plan provides for paying secured claims (merely parroting the statutory language of alternative treatment) puts not only his ability to perform the plan in question, but also his good faith in prosecuting this case.

On Schedule I, Debtor lists having \$8,434.37 in wages. Dckt. 1 at 21. On Schedule J Debtor listing having one dependent, a minor grandchild. After withholding and expenses, Debtor states he has \$493.04 in monthly net income. The Amended Plan incorporates the prior plan payment of \$370.00 per month through February 2017, and then increases the Plan payments to \$500.00 per month for the remaining forty months of the Plan.

The Plan does not provide for any Class 1, Class 2, Class 3, Class 5 ,or Class 6 Claims. In Class 4, Debtor states that he is current on his two mortgage payments and will continue to pay them, notwithstanding there being a negative equity in the Property.

The court cannot identify, from the current or prior confirmed plan why Debtor is in this Chapter 13 case. He has the ability to pay his creditors and had no defaults to cure (having provided for Class 4 plan payment treatment for all his secured claims).

Debtor, on December 12, 2016 filed a Motion to have the court approve a modification of the loan with Wells Fargo Bank, N.A. On the Plan and Schedule D, Debtor lists Wells Fargo Bank, N.A. having two secured claims. Motion, Dckt. 19. The Motion states that the then-current monthly mortgage payment to be modified was \$1,985, and the modification would decrease it to \$1,536, crediting additional monthly net income of \$450.00 per month. *Id.* at 2:14–16. Strangely, this stated monthly payment of the loan to be modified was \$100 per month more than stated on the original confirmed plan in this case. Dckt. 36. The court granted the Motion and authorized Debtor to reduce his monthly mortgage expense by \$450.00 per month.

For the Proposed Modified Plan, Debtor continues to state that the Class 4 payment to Wells Fargo Bank, N.A. on the modified loan is \$1,878—not the reduced \$1,536.00. Dckt. 36 at 4. Debtor’s lack of honest, truthful, personal knowledge about his current finances does not appear to be in good faith, but part of a coordinated effort with counsel to mislead the court.

Grounds exist for dismissing this case. Far more serious relief may also be warranted because of Debtor’s misstatement and hidden \$450.00 of additional projected disposable income. Additionally, Debtor’s “testimony” consisting of merely signing a “declaration” quoting generic language from the Bankruptcy Code is a subject to be further addressed.

The Motion is granted, and the bankruptcy case is dismissed. To avoid Debtor and counsel believing that dismissal is a tactical advantage to further abuse the federal courts, dismissal of the case does not remove jurisdiction of this court to address the conduct of Debtor and counsel in this case.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 bankruptcy case is dismissed.

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

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 10, 2017. 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 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 XXXXXXXXXXXX.
--

The Trustee argues that Debtor did not commence making plan payments and is \$353.00 delinquent in plan payments (with another \$353.00 coming due before the hearing), which represents one month of the \$353.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

In responding to Trustee's Objection to Confirmation, Debtor's counsel argues (no evidence being filed) that the default has been cured. Dckt. 22. In that response, Debtor also states that the Plan inadvertently left out a provision for paying Debtor's student loan debt outside the Plan, while providing a 100% dividend to creditors holding general unsecured claims. *Id.*

At the hearing, XXXXXXXXXXXXXXXXXXXXXXX.

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

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

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

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

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

30. [14-28452-E-13](#) **SATINDERJIT BAINS** **MOTION TO DISMISS CASE**
 DPC-3 **Marc Carpenter** **3-1-17 [79]**

Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$962.52 delinquent in plan payments (with another \$320.84 coming due before the hearing), which represents multiple months of the \$320.84 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

31. [15-24752](#)-E-13 **JAMES EDWARDS** **MOTION TO DISMISS CASE**
DPC-2 **Paul Bains** **3-1-17 [42]**

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 21, 2017, Dckt. 52; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 March 15, 2017. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on March 6, 2017.

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

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on February 11, 2017. The court computes that 46 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 6, 2017.

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

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

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

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

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

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

Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,160.00 delinquent in plan payments (with another payment coming due before the hearing), which represents multiple months of the \$3,335.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor is in material default under the Plan because a Notice of Mortgage Payment Change was filed that increased the monthly contract installment amount from \$2,085.00 to \$2,170.72. *See* Dckt. 60. Debtor has not increased the plan payment accordingly. The prior confirmed plan payment was \$3,335.00. Section 2.08(b)(4)(i) of the Plan makes that failure a breach of the Plan. Failure to provide for the increased payment puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

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

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

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

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

Final Ruling: No appearance at the March 29, 2017 hearing is required.

Final Ruling: No appearance at the March 29, 2017 hearing is required.

March 29, 2017, at 10:00 a.m.
- Page 43 of 73 -

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 95, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

37. [15-24954](#)-E-13 JESSICA BELLOSO
DPC-2 Susan Dodds

MOTION TO DISMISS CASE
3-1-17 [59]

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 March 1, 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.

The Trustee seeks dismissal of the case on the basis that Jessica Belloso (“Debtor”) is \$1,736.00 delinquent in plan payments (with another \$558.00 coming due before the hearing), which represents multiple months of the \$558.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on March 6, 2017. Dckt. 63. Debtor states that she will be current on plan payments by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

38. 16-21854-E-13 **KENNETH TABOR** **MOTION TO DISMISS CASE**
 DPC-2 **Stephen Murphy** **3-1-17 [131]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 1, 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 31, 2017.

The Trustee seeks dismissal of the case on the basis that Debtor is \$6,360.00 delinquent in plan payments (with another \$2,120.00 coming due before the hearing), which represents multiple months of the \$2,120.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed an admittedly-late Response on March 17, 2017. Dckt. 135. Debtor relays that he has undergone a lack of work and expects an upcoming busy season. Debtor states that he communicated with the Trustee and that they both agree to a continuance of this Motion.

At the hearing, the Trustee **agreed / did not agree** to a continuance of this Motion.

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

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

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

IT IS ORDERED that **the hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 31, 2017.**

Final Ruling: No appearance at the March 29, 2017 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 17, 2017. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Trustee 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 22, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

40.	<u>16-27968</u> -E-13	RICHARD/CATHY BURNETT Dale Orthner	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-7-17 <u>[20]</u>
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Final Ruling: No appearance at the March 29, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on March 9, 2017. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on March 2, 2017.

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 29, 2017 hearing 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 March 1, 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 31, 2017.

The Trustee argues that Floydette James ("Debtor") did not commence making plan payments and is \$2,867.00 delinquent in plan payments (with another \$2,867.00 coming due before the hearing), which represents one month of the \$2,867.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 15, 2017. Dckt. 45. Debtor states that her employer would not allow her to be absent on February 23, 2017, the date of the Meeting of Creditors. Debtor states that her employer has approved her absence from work on April 27, 2017, the next date of the Meeting of Creditors. Debtor states that she made her first plan payment on March 7, 2017, making her current, and will continue to make payments.

TRUSTEE'S RESPONSE

The Trustee filed a Response on March 16, 2017. Dckt. 48. The Trustee notes that Debtor is current on plan payments. The Trustee requests that the Motion be continued to May 31, 2017, to allow Debtor to attend the Meeting of Creditors on April 27, 2017.

Debtor appearing to be prosecuting this case, and the Trustee having requested a continuance, the hearing on this matter is continued to 10:00 a.m. on May 31, 2017.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 31, 2017.

42.	<u>13-31975</u> -E-13 DPC-2	JACK/LINDA GANAS Peter Cianchetta	CONTINUED MOTION TO DISMISS CASE 9-9-16 <u>153</u>
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Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 13, 2017, Dckt. 237; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 237, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

43.	<u>16-27675</u> -E-13 DPC-2	DAWN BASURTO Pro Se	CONTINUED MOTION TO DISMISS CASE 1-24-17 <u>[39]</u>
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UNITED STATES TRUSTEE'S RESPONSE

The United States Trustee filed a Response on February 8, 2017, in which the U.S. Trustee requests that the case be held open long enough for the U.S. Trustee to investigate information received from David Cusick, the Chapter 13 Trustee, regarding involvement of an undisclosed bankruptcy petition preparer in this case. Dckt. 46. The U.S. Trustee states that there is no opposition to the eventual dismissal of this case, but the investigation into the matter reported by the Chapter 13 Trustee may cause the U.S. Trustee to file a motion under 11 U.S.C. § 110 or an adversary proceeding.

A review of the court's files discloses that this is Debtor's fourth Chapter 13 bankruptcy case since April 2016. Bankr. E.D. Cal. 16-22462, 16-26235, and 16-26830. Debtor has a fifth Chapter 13 case, which was filed on June 1, 2011, and dismissed on March 13, 2014. Bankr. E.D. Cal. 11-33759.

FEBRUARY 22, 2017 HEARING

At the hearing, the court found that not dismissing this case was reasonable at the time while the United States Trustee conducted an investigation. Dckt. 57. The hearing on the matter was continued to 10:00 a.m. on March 29, 2017.

No further pleadings have been filed by any interested party since the February 22, 2017 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 Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on February 23, 2017. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on February 16, 2017.

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

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 25, 2017. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$76.00 due on January 17, 2017.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$76.00.

UNITED STATES TRUSTEE'S OPPOSITION

The United States Trustee filed a Response on February 8, 2017, in which the U.S. Trustee requests that the case be held open long enough for the U.S. Trustee to investigate information received from David Cusick, the Chapter 13 Trustee, regarding involvement of an undisclosed bankruptcy petition preparer in this case. Dckt. 46. The U.S. Trustee states that there is no opposition to the eventual dismissal of this case, but the investigation into the matter reported by the Chapter 13 Trustee may cause the U.S. Trustee to file a motion under 11 U.S.C. § 110 or an adversary proceeding.

FEBRUARY 22, 2017 HEARING

At the hearing, the court found that not dismissing this case was reasonable at the time while the United States Trustee conducted an investigation. Dckt. 55. The hearing on the matter was continued to 10:00 a.m. on March 29, 2017.

No further pleadings have been filed by any interested party since the February 22, 2017 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 Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

46. [15-27079-E-7](#) LANNES SHARMAN MOTION TO DISMISS CASE
DPC-1 Michael O'Dowd Hays 2-27-17 [\[71\]](#)

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

Sufficient Notice Not Provided. No Proof of Service was filed with the Notice of Conversion.

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

The Motion to Dismiss is denied without prejudice as moot.

The Trustee seeks to dismiss Debtor's Chapter 13 case. Debtor filed a Notice of Conversion on March 14, 2017, however, converting the case to a proceeding under Chapter 7. Dckt. 75. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on March 14, 2017. *McFadden*, 37 B.R. at 521.

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

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

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

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

47. [16-27179](#)-E-13 **DAVID GONZALES** **MOTION TO DISMISS CASE**
 DPC-2 **Corrina Roy** **2-27-17 [36]**

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on March 16, 2017, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 51, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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 15, 2017. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

The Motion to Dismiss is denied.
--

The Trustee moves for the court to dismiss this case pursuant to 11 U.S.C. § 1307(c) because a debtor died, and the court has not found that further administration of this case is possible under Federal Rule of Bankruptcy Procedure 1016. Debtor Teri McComas died on September 16, 2014, and since then, the court has denied both Debtor's motion to continue with administration of the case and the Trustee's motion to modify the plan.

The Trustee argues that the surviving Debtor is in a confirmed plan that has otherwise completed. That plan called for at least \$900.00 to be paid monthly for sixty months, providing at least 35% to unsecured claims. The Trustee reports that Debtor has paid \$65,000.00 so far, and the Trustee is holding \$11,145.55 because an extra \$11,000.00 in payments was not authorized by the plan.

The Trustee notes that Debtor received approximately \$200,000.00 in life insurance proceeds that were not reported promptly and were spent.

Debtor and Debtor's counsel have had for almost a year to come up with some plan to address the improperly diverted insurance proceeds, balancing Debtor's great loss with some recognition of his

violation of federal law. All Debtor and his counsel have done, or apparently been willing to do, is to state that the money is gone, nothing can be done. The friends and family members who received the monies are purportedly unable or unwilling to pay anything back to help the Debtor out of this situation. Even after current counsel substituted in, Debtor purports to have continued in disposing of assets without regard to his obligations under federal law.

At one juncture, Debtor and Debtor's counsel have "blamed" prior counsel, taking a "nothing can be done and Debtor never having been told what to do" stance. Again, it is an argument of "federal law has to be ignored because there just does not appear to be anything Debtor or Debtor's counsel can do, so just ignore the diverted \$200,000."

While the court has worked hard to give Debtor and Debtor's counsel not merely the benefit of the doubt but repeated opportunities to come up with some "plan" that is better than "the money is gone, so sorry, creditors get none of it" and makes at least a passing nod to federal law in light of Debtor's loss, they come up with nothing. It appears that the lack of action may be more part of a coordinated scheme by these players rather than an inability to come up with something.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.~~

~~Cause does exist to dismiss this case. The Motion is granted.~~

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 1, 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).

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

The Trustee seeks dismissal of the case on the basis that Marvin Gardner and Daryl Gardner ("Debtor") is \$6,507.11 delinquent in plan payments (with another \$2,238.37 coming due before the hearing), which represents multiple months of the \$2,238.37 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on March 15, 2017. Dckt. 74. Debtor states that Marvin Gardner lost his job and has recently acquired a new one. Debtor expects a tax refund soon, plus Mr. Gardner's new wages, and intends to cure the delinquency by March 30, 2017. Unfortunately for Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

50. [17-20488](#)-E-13
DPC-1

PHILLIP/REHEMA PETE
Pro Se

MOTION TO DISMISS CASE
3-10-17 [14]

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

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

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

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 March 10, 2017. 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 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

The Trustee argues that Debtor did not commence making plan payments and is \$2,895.67 delinquent in plan payments (with another \$2,895.67 coming due before the hearing), which represents one month of the \$2,895.67 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

The Trustee asserts that Debtor did not properly serve the Amended Plan on all interested parties and has yet to file a motion to confirm the Amended Plan. The Amended Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, Debtor must file a motion to confirm the Amended 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).

A review of the court's files discloses that this is Debtor's third Chapter 13 case since June 6, 2016. The prior cases are Bankr. E.D. Cal. 16-23673 (dismissed November 11, 2016) and 16-27534 (dismissed January 22, 2017).

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

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

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

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

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

Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

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

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

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

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

The Trustee argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 18, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

JANUARY 18, 2017 HEARING

At the hearing, the court continued the hearing on the matter to 10:00 a.m. on March 29, 2017. Dckt. 54.

No further pleadings have been filed since the January 18, 2017 hearing.

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

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

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

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

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

52.	<u>13-21194</u> -E-13 DPC-5	RICHARD/LINDA STROM Chinonye Ugorji	MOTION TO DISMISS CASE 3-1-17 [62]
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Final Ruling: No appearance at the March 29, 2017 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 March 1, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee argues that Debtor is in material default under the Plan because a Notice of Mortgage Payment Change was filed that increased the monthly contract installment amount to \$3,466.88. *See* Dckt. 60. Debtor has not increased the plan payment accordingly and has continued to pay \$1,628.00 per month.

The prior confirmed plan payment was \$1,627.76. Section 5.03 of the Plan makes that failure a breach of the Plan. Failure to provide for the increased payment puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Additionally, Debtor is \$1,634.16 delinquent under the increased plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

53.	<u>16-24396</u> -E-13 DPC-1	ROBERT MACBRIDE Pro Se	CONTINUED MOTION TO DISMISS CASE 10-17-16 <u>[55]</u>
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 17, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

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

DEBTOR'S OPPOSITION

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

NOVEMBER 16, 2016 HEARING

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

DECEMBER 6, 2016 HEARING

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

TRUSTEE'S SUPPLEMENTAL DECLARATION

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

JANUARY 18, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. because Debtor reported that the delinquency had been cured on January 17, 2017, but the Trustee was not able to confirm receipt of any such payment. Dckt. 89.

FEBRUARY 22, 2017 HEARING

At the hearing, the Trustee reported that the delinquency had not been cured completely and that \$2,000.00 was in arrears still. Dckt. 89. The court continued the hearing on the matter to 10:00 a.m. on March 29, 2017, to allow Debtor a second and final opportunity to obtain legal counsel to prosecute this case.

DISCUSSION

Nothing further has been filed since the February 22, 2017 hearing.

While seemingly attempting to prosecute this case in good faith, Debtor has been unable to navigate some of the fundamental requirements under the Bankruptcy Code. In looking at the Third Amended Chapter 13 Plan, Debtor now proposes a sixty-four month plan (which exceeds the sixty month maximum permitted by Congress, 11 U.S.C. § 13322(c)). No declaration is provided in support of the Motion.

Debtor has filed amended Schedules I and J, showing that he has \$3,324.93 in monthly net income. Dckt. 96. To get to this number, Debtor has made some unexplained changes and questionable (as to reasonableness of) expenses.

COMPARISON OF INCOME		
Income Source	Original Schedule I Dckt. 27	Amended Schedule I Dckt. 96
Gross Wages, Salary Commissions	\$3,200.00	\$0.00
Net Income from Rental Property and Operating a Business	\$3,200.00	\$1,830.00
Social Security	\$690.00	\$690.00
Assistance From Friend	\$0.00	\$2,000.00
Withholding for Taxes	\$0.00	\$0.00
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Total Monthly Income	\$7,090.00	\$4,520.00

COMPARISON OF EXPENSES		
	Original Schedule J Dckt. 27	Amended Schedule J Dckt. 96
Total Expenses	(\$2,982.59)	(\$1,195.07)
Rent/Mortgage	(\$1,807.52)	\$0.00
Real Estate Tax	(\$167.00)	(\$167.00)

Property Insurance	(\$60.00)	(\$60.00)
Home Maintenance	(\$50.00)	(\$50.00)
Electricity	(\$200.00)	(\$200.00)
Water, Sewer, Garbage	(\$165.07)	(\$165.07)
Phone, Cable	(\$102.00)	(\$102.00)
Food, Housekeeping Supplies	(\$180.00)	(\$200.00)
Clothing, Laundry	(\$10.00)	(\$10.00)
Personal Care Products	(\$15.00)	(\$15.00)
Medical, Dental	\$0.00	\$0.00
Transportation	(\$50.00)	(\$50.00)
Entertainment	\$0.00	\$0.00
Charitable	(\$1.00)	(\$1.00)
Taxes - Income and Self-Employment	\$0.00	\$0.00
Health Insurance	(\$130.00)	(\$130.00)
Vehicle Insurance	(\$45.00)	(\$45.00)

Computation of Disposable Income From Schedules:

Original: \$4,107.41

Amended: \$3,324.93.

On the expense side, the obvious reason for the decrease in expenses is that there is no rent/mortgage payment. In the proposed Third Amended Plan (Dckt. 94), Debtor proposes to make \$2,871.00 per month plan payments that shall be used to fund: (1) \$2,242.52 payment for the arrearage and current monthly mortgage payment; (2) \$25.00 payment to Sacramento County Utilities; (3) Chapter 13 Trustee fees, estimated to be \$201.00 (estimated at 7%), and (4) \$410.36 for priority unsecured tax claims; and (5) \$269.94 for a 100% dividend for creditors holding general unsecured claims.

The required disbursements under the plan total \$3,148.82, leaving the plan underfunded by (\$277.82).

Additionally, several expenses appear to be unreasonable and are “plug in” numbers to make it appear that Debtor can fund the plan. These include:

- A. \$200 food and housekeeping supplies.....Debtor offers no explanation as to how he can survive for five years with less than \$2.20 per meal (assuming a thirty-day month).
- B. \$10 for clothes and laundry.....Over a five year period of a plan, the \$10 is unreasonably low.
- C. \$0.00 for medical and dental.....Debtor offers no evidence as to how, over a five year period, he will have no medical or dental expenses (whether co-pay or over-the-counter prescriptions, bandages, and the like).
- D. \$50 for transportation.....In addition to the insurance line item, Debtor has to pay for gas, maintenance, and registration. On Schedule B Debtor lists owning two vehicles. The first is a 1984 Toyota Landcruiser with 282,293 miles. The second is a 1982 Toyota Landcruiser with 300,076 miles (and stated to need mechanical and body repairs. Dckt. 27 at 4. Taking the better of the two, a 1984 vehicle with 282,293 miles will need significant maintenance over the five years of a plan (most likely including new tires).
- E. \$0.00 for income and self-employment taxes.....Though stating he has a business generating \$1,830.00 per month in income, Debtor makes no provision for payment pf required taxes.

For income, it appears Debtor may have overstated his income on Original Schedule I, having input the same number for both wages and business income. For the Amended Schedule I, Debtor has to depend on a monthly gift of \$2,000.00 from a friend. Even with this gift, and not having reasonable expenses, Debtor could just make the minimum monthly distributions promised in the Third Amended Plan. (The promised distribution could be reduced by \$269.94 if there was no dividend to creditors receiving general unsecured claims.)

It appears that this bankruptcy case exists to try to cure the arrearage on the obligation secured by Debtor's home. The Third Amended Plan states that there is a \$21,000.00 arrearage to be cured (at \$435.00 per month) and a \$1,807.52 current monthly mortgage payment. Dckt. 94 at 2. Proof of Claim No. 3 filed by creditor Deutsche Bank National Trust Company, as Trustee, states a secured claim in the amount of \$383,183.66, with a pre-petition arrearage of \$25,851.02. An attachment to Proof of Claim No. 3 lists the monthly principal and interest mortgage payment to be \$1,465.19, with an additional \$373.87 escrow impound. It appears that Debtor has inadvertently double-counted the property tax and insurance expense in listing on original and amended Schedules J, while also providing for the payment through the escrow impound. This would free up a modest amount of money from expenses.

On Schedule A Debtor values the property securing the above claim to have a value of \$395,000.00. This would result in there being equity, not including any costs of sale, of \$12,000.00.

March 29, 2017 Hearing

With respect to his prosecution of this Chapter 13 case and the information provided, Debtor explained ~~xxxxxxxxxxxxxxxxxx~~.

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

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

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

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

54.	<u>15-24997</u> -E-13 DPC-2	DAVID/AMY POST Mary Ellen Terranella	MOTION TO DISMISS CASE 3-1-17 [<u>53</u>]
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Final Ruling: No appearance at the March 29, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 57 & 60. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

The court notes that Debtor, both in this Motion and in the Motion to Confirm Modified Plan, pleads that a trial loan modification has been approved and is pending currently, but a review of the docket shows that no Motion to Approve Loan Modification has been filed for the court's consent.

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

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

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

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 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 13, 2017.

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

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

March 29, 2017, at 10:00 a.m.
- Page 70 of 73 -

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

56. [17-20199](#)-E-13 **DENNIS BACLAGAN** **MOTION TO DISMISS CASE**
DPC-1 **Pro Se** **3-1-17 [31]**

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

Local Rule 9014-1(f)(1) Motion—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 March 1, 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.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$300.00 delinquent in plan payments (with another \$300.00 coming due before the hearing), which represents one month of the \$300.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that Debtor did not properly serve the Amended Plan on all interested parties and has yet to file a motion to confirm the Amended Plan. The Amended Plan was filed before the notice of the Meeting of Creditors was issued. On January 28, 2017, the Notice of Bankruptcy Case and a Chapter 13 Plan were served on parties in interest in this case. Certs. of Service, Dckts. 24, 25. Unfortunately, the Chapter 13 Plan served was the original plan, not the Amended Chapter 13 Plan. Cert. of Service, Plan attached; Dckt. 25. That Plan is blank, except for Debtor's signature.

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

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

The Amended Plan filed by Debtor is also blank as to plan terms and creditor distributions. Other than stating that Debtor will make payments of \$300.00 per month for forty-eight months, all other provisions are left blank.

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

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

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

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

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

57. 16-26227-C-7 **HOWARD LITTLE**
 Pro Se

**CONTINUED ORDER TO SHOW
CAUSE - FAILURE TO PAY FEES
12-23-16 [39]**

CASE CONVERTED: 01/18/2017

Final Ruling: No appearance at the March 29, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on December 25, 2016. The court computes that 93 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fees.

The Order to Show Cause is discharged as moot.

JANUARY 18, 2017 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on March 29, 2017, to allow Debtor to address the filing fees pos-conversion to Chapter 7 and request a fee waiver if he determines that such is warranted.

ORDER ON APPLICATION FOR WAIVER OF FILING FEE

On February 4, 2017, the court entered an order waiving payment of filing fees. Dckt. 70.

The court having waived the filing fee, the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.