

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

May 31, 2017, at 10:00 a.m.

1.	13-34801 -E-13 DPC-2	ESTHER HWANG Eric Gravel	CONTINUED MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 3-10-17 [73]
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Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Final Ruling: No appearance at the May 31, 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 May 2, 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). 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 \$29,583.00 delinquent in plan payments (with another \$5,400.00 coming due before the hearing), which represents multiple months of the \$5,400.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the May 31, 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 April 4, 2017. By the court's calculation, 57 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 argues that Debtor did not commence making plan payments and is \$3,797.00 delinquent in plan payments (with another \$3,796.00 coming due before the hearing), which represents multiple months of the \$1,898.00 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 March 7, 2017. A review of the docket shows that Debtor has filed a new plan, but Debtor has not filed a motion to confirm that 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.

4. [15-25102-E-13](#) **LARRY/ROSEMARY CALKINS** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **5-3-17 [77]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 3, 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 Debtor is \$9,827.34 delinquent in plan payments (with another \$2,138.67 coming due before the hearing), which represents multiple months of the \$2,138.67 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 May 16, 2017. Dkt. 81. Debtor promises to file, set, serve, and be current under a modified plan before the hearing date.

Debtor states that such a modified plan will account for the delinquency, as well as a trial loan modification that Debtor has entered into.

DISCUSSION

Unfortunately for Debtor, a promise to file a modified plan is not evidence of filing a modified plan. Additionally, the court's review of the docket shows that Debtor has not sought court approval to enter into a loan modification.

Wells Fargo Bank, N.A., ("Creditor") filed a Notice of Mortgage Payment Change on February 2, 2017, indicating in Part 3 that the mortgage payment was changing because of "Proposed modification agreement - trial payments." Attached to the Notice is a letter dated January 26, 2017, and addressed to Debtor. The letter states that Debtor was approved for a loan modification, and it lists that three trial period payments of \$1,177.88 each would be due on March 1, 2017, April 1, 2017, and May 1, 2017. The court has not approved those trial payments, and no party has requested that the court approve a permanent loan modification.

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 May 31, 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 May 19, 2017, Dckt. 68; 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. 68, 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 May 31, 2017 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on May 9, 2017, Dckt. 92; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response 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 filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 92, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the May 31, 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 May 2, 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). 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 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 April 4, 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.

8. [12-36003](#)-E-13 **CHRISTOPHER/MELISSA BORBE** **MOTION TO DISMISS CASE**
DPC-1 Christine Younger 5-2-17 [[64](#)]

Final Ruling: No appearance at the May 31, 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.**

9. [16-27603](#)-E-13 **CHRISTINE MCKAY** **MOTION TO DISMISS CASE**
DPC-4 Peter Macaluso 5-3-17 [[76](#)]

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 May 3, 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 Debtor is \$6,650.00 delinquent in plan payments (with another \$4,175.00 coming due before the hearing), which represents multiple months of the \$4,175.00 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 May 15, 2017. Dckt. 80. Debtor's attorney (no declaration of Debtor having been filed) promises in the Opposition that the Debtor will be current on or before the hearing date.

Debtor's failure (or unwillingness) to provide any testimony under penalty of perjury as to the reason for the default and how such a substantial payment can be "made up," in light of the financial information in this case, appears to be an admission that the Motion should be granted.

This is Debtor's fourth bankruptcy case filed since November 2014. Debtor appears to annually file bankruptcy cases, with one in 2014, the second in 2015, the third in 2016, and now this case in 2017.

The first was a Chapter 7 case in which Debtor obtained her discharge on February 26, 2015. 14-31511, Dckt. 17. The second and third cases, filed under Chapter 13 with the assistance of her current counsel were both dismissed. 15-26026 and 16-21315. Those two prior cases were dismissed due to Debtor's monetary defaults.

The good faith of Debtor and Counsel in filing repeated bankruptcy cases in which Debtor allows for monetary defaults resulting in the dismissal of the cases is in doubt in this case.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. Debtor offers no clue as to why the default has occurred and how the Debtor can come up with the money to make such a substantial cure in this case. Her attorney's statement that "Debtor will be current" does not suffice. 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. [17-22303](#)-E-13 SEAN/DAWN LUDDY
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
5-11-17 [[14](#)]

Final Ruling: No appearance at the May 31, 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 May 13, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on May 8, 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 subjection of the Order to Show Cause has been cured.

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

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

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

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

**APPEARANCE OF RICHARD JARE, PETER MACALUSO, AND
TAEVONA MONTGOMERY REQUIRED AT THE MAY 31, 2017
HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Debtor's Former Attorney, Chapter 13 Trustee, and Office of the United States Trustee on May 4, 2017. By the court's calculation, 27 days' notice was provided.

The Application for Amended Order Granting Motion to Modify Chapter 13 Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 Application for Amended Order Granting Motion to Modify Chapter 13
Plan is denied.**

On April 28, 2017, Richard Jare, former counsel for Taevona Montgomery ("Debtor"), filed an *Ex Parte* Application for Amended Order Granting Motion to Modify Chapter 13 Plan. The Application states that Mr. Jare was substituted out as counsel for Debtor prior to the preparation and filing of the order

confirming the modified plan. The hearing on the motion to confirm the modified plan was conducted on January 18, 2017, and the order granting the motion was filed on January 30, 2017. Dckt. 169.

The Substitution of Attorney executed by Debtor; Richard Jare, as withdrawing counsel; and Peter Macaluso, as new counsel, was filed on February 8, 2017. Dckt. 170. The court's order authorizing the withdrawal and substitution of counsel was filed on February 16, 2017. Dckt. 178.

No order confirming the Modified Chapter 13 Plan has been filed, which led the Chapter 13 Trustee to file a Motion to Dismiss the Chapter 13 Case. Dckt. 187. In the Application, it is asserted that there is an impasse as to which attorney—the former attorney who is no longer Debtor's counsel or Debtor's current counsel of record—should complete the work for Debtor.

The Application requests that the court “clarify” its order granting the Motion to Confirm the Modified Plan, which includes the standard language that “Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan,” Dckt. 169.

The Application states that it is being presented to the court by “Richard Jare as attorney, NOT AS Attorney for Debtor.” Dckt. 191.

Effectively, the Application requests that the court order one attorney or the other to create the order. That such a dispute could exist between an attorney who is no longer the attorney for Debtor, having been substituted out at the desire of Debtor, and the Debtor's current attorney of record is hard for the court to believe. That neither Debtor nor her current attorney of record has ensured that an order confirming the plan has been filed with the court creates the appearance that this bankruptcy case is not being prosecuted diligently or in good faith. Debtor appears to have lost interest in the case, having obtained an order authorizing the sale of real property. Dckt. 201.

ORDER SETTING HEARING

On May 2, 2017, the court issued an Order Setting Hearing for this matter. Dckt. 192. The court set the hearing for 10:00 a.m. on May 31, 2017, and ordered that Richard Jare, Peter Macaluso, and Taevona Montgomery each would appear personally at the hearing. *Id.* at 2.

The court specified that the attending parties shall provide the court with oral status reports on this Chapter 13 case, shall explain how the case is being prosecuted in good faith, and shall explain why an order confirming the Modified Chapter 13 Plan has not been filed with the court.

REPLY BY DEBTOR'S CURRENT COUNSEL OF RECORD

Peter Macaluso, Debtor's attorney of record, filed a Reply on May 12, 2017. Dckt. 196. Mr. Macaluso states that he was unaware of a need to file an order confirming the modified plan because the motion to confirm the modified plan had been granted prior to his substitution into this case.

Mr. Macaluso states that he will file an order confirming the modified plan before the hearing date.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on May 18, 2017. Dckt. 202. The Trustee notes that Richard Jare was Debtor's counsel when the modified plan was filed and when it was heard on January 24, 2017.

The Trustee received an e-mail from Mr. Jare on February 21, 2017, asking why payments were not being disbursed to him for attorney's fees in this case. A reply to Mr. Jare explained that the Trustee needed an order on the motion to confirm the modified plan; a copy of that e-mail was sent to Mr. Macaluso as well.

On April 26, 2017, Mr. Jare e-mailed two proposed orders to the Trustee. *See* Exhibits 2 & 3, Dckt. 204. The Trustee rejected both proposals because neither contained Mr. Jare's letterhead at the top of the orders.

On May 11, 2017, the Trustee received a proposed order confirming the modified plan from Mr. Macaluso.

MAY 31, 2017 HEARING

Mr. Macaluso, Debtor's current counsel protests that he did not know that an order had not been lodged with the court confirming the Chapter 13 Plan. Reply filed on May 12, 2017, Dckt. 196. However, the Chapter 13 Trustee filed on April 26, 2017, a Motion to Dismiss this case due to the failure of "counsel" to provide the proposed confirmation order. Dckt. 187. No explanation is given by Debtor and current counsel why when they learned of this on April 27, 2017, or on April 28 or on May 1, or later on May 5, or prior to the May 12, 2017 statement of lack of knowledge, why Debtor and current counsel failed to act to get an order lodged with the court. Rather, it appears that Debtor and current counsel chose intentionally to not have an order lodged, keeping the case in a "plausible deniability" state to be used (and misused) by Debtor after obtaining the order to make the sale of property.

At the hearing, the parties reported that **xxxxx**.

No basis has been shown for Debtor's prior counsel to move this court for an order modifying a prior order obtained by Debtor. Debtor is now represented by other counsel, who, if an amendment was needed, could or would have filed such a motion.

Further, Debtor's current counsel would have prepared a proposed order confirming the plan, if the Debtor and current counsel sought to prosecute this case.

Further, Debtor's current counsel and Debtor's prior counsel would have professionally communicated with each other about the need to have the order lodged with the court, and a proposed order would have been lodged with the court. Rather, prior counsel and current counsel appear to be working with Debtor to intentionally delay the order confirming the case. It appears that the motion to confirm the plan may have been a ruse to defraud the court into issuing an order approving a sale of property that is not part of the good faith prosecution of 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 Application for Amended Order Granting Motion to Modify Chapter 13 Plan filed by Debtor's Former Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Application for Amended Order Granting Motion to Modify Chapter 13 Plan is denied.

12. [15-29404](#)-E-13 **TAEVONA MONTGOMERY** **MOTION TO DISMISS CASE**
 DPC-4 **Peter Macaluso** **4-26-17 [187]**

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, Debtor's Former Attorney, and Office of the United States Trustee on April 26, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 states that Taevona Montgomery's ("Debtor") Modified Plan was confirmed on January 30, 2017, while Debtor was represented by Richard Jare. *See* Dckt. 169. Peter Macaluso was substituted in as counsel on February 16, 2017. Dckt. 178. Despite the transition of attorneys, the Trustee has not received a proposed order confirming the modified plan.

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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 12, 2017. Dckt. 194. Debtor's current attorney states that he was unaware of the need to file an order confirming the modified plan because that plan had been granted prior to the substitution. He states that he will file such order before the hearing date.

Additionally, Debtor purports to have cured the delinquency on May 4, 2017.

DISCUSSION

Debtor has not submitted any evidence of curing the delinquency, and no order confirming has been submitted to the court.

In responding to the Order setting the hearing on the ex parte application to "amend" the order, Debtor and Debtor's current counsel profess being ignorant of there being a missing order. However, both Debtor and Debtor's current counsel were given written notice thereof by the Motion to Dismiss filed on April 26, 2017. Dckt. 187. Though being told this in writing, no action was taken by Debtor or current counsel—at least until the court issued its order for Debtor, Debtor's current counsel, and Debtor's prior counsel to appear and explain the state of affairs in this bankruptcy case.

That such a dispute could exist between an attorney who is no longer the attorney for Debtor, having been substituted out at the desire of Debtor, and Debtor's current attorney of record is hard for the court to believe. That neither Debtor nor her current attorney of record has ensured that an order confirming the plan has been filed with the court creates the appearance that this bankruptcy case is not being prosecuted diligently or in good faith. Debtor appears to have lost interest in the case, having obtained an order authorizing the sale of real property. Dckt. 201.

Further, Debtor's current counsel and Debtor's prior counsel would have professionally communicated with each other about the need to have the order lodged with the court, and a proposed order would have been lodged with the court. Rather, prior counsel and current counsel appear to be working with Debtor to intentionally delay the order confirming the case. It appears that the motion to confirm the plan may have been a ruse to defraud the court into issuing an order approving a sale of property that is not part of the good faith prosecution of this case.

Cause has been shown 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. [16-20004-E-13](#) **BRYAN/BERBEL CONNEELY** **MOTION TO DISMISS CASE**
DPC-1 **Scott Hughes** **5-3-17 [39]**

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 May 3, 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 Debtor is \$12,548.00 delinquent in plan payments (with another \$3,137.00 coming due before the hearing), which represents multiple months of the \$3,137.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on May 17, 2017. Dckt. 43. Debtor, through Debtor's attorney, promises to be current by the hearing date.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. Debtor provides no testimony as to the cause of the default and why further defaults are not likely. Even more significantly, Debtor fails (or refuses) to provide any testimony as to how Debtor can cure a \$12,548.00

default and make the additional \$3,137.00 regular monthly payment in this case. It appears that Debtor's actual monthly net income is substantially more than the information provided by Debtor under penalty of perjury in this case.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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. [13-35706-E-13](#) **ARRON/FELICIA CARRILLO** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **5-2-17 [38]**

Final Ruling: No appearance at the May 31, 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 May 18, 2017, Dckt. 44; 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. 44, 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.

15. [17-20506-E-13](#) **THERESITA GODINEZ** **MOTION TO DISMISS CASE**
DPC-2 **Mikalah Liviakis** **5-3-17 [75]**

Final Ruling: No appearance at the May 31, 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 May 3, 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 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 argues that Debtor did not commence making plan payments and is \$11,397.00 delinquent in plan payments (with another \$3,799.00 coming due before the hearing), which represents multiple months of the \$3,799.00 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 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 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 April 4, 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.

16. [13-29907](#)-E-13 SYAMPHAI MOTION TO DISMISS CASE
DPC-1 LIEMTHONGSAMOUT 5-1-17 [\[118\]](#)
Scott Shumaker

Final Ruling: No appearance at the May 19, 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 May 19, 2017, Dckt. 128; 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. 128, 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 May 2, 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 Debtor is \$1,110.00 delinquent in plan payments (with another \$555.00 coming due before the hearing), which represents multiple months of the \$555.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on May 17, 2017. Dckt. 48. Debtor's attorney states that Debtor evicted a tenant who had been paying \$500.00 per month in rent, which payment the Attorney argues Debtor had relied upon to make the plan payments in this case. Debtor's attorney states that Debtor has secured a new tenant who will begin paying \$600.00 per month in June 2017.

Debtor's attorney promises to file a modified plan and motion to confirm and will propose increased monthly payments of \$612.00 beginning in June 2017 for the remaining months of the plan.

RULING

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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. [16-20507](#)-E-13 LABARRON ROBINSON MOTION TO DISMISS CASE
DPC-3 Matthew DeCaminada 5-3-17 [\[49\]](#)

Final Ruling: No appearance at the May 31, 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 May 3, 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 \$447.00 delinquent in plan payments (with another \$117.20 coming due before the hearing), which represents multiple months of the \$117.20 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.

19.	<u>13-24610</u> -E-13 DPC-6	DAX/TINA CHAVEZ Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 3-1-17 [157]
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Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 2017.</p>

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 refiling 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, case law, or academic authority to support its position that it may file a joinder in this matter.

It appears that Creditor is merely filing a document that supporting the granting of the relief requested by the Trustee.

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.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on March 27, 2017. Dckt. 185. The court reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 183, 186. 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 personal knowledge (FED. R. EVID. 601, 602).

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017. Dckt. 190.

CONTINUANCE OF HEARING

At the May 9, 2017 Confirmation Hearing, the court continued the hearing on the Motion to Confirm Modified Plan to 3:00 p.m. on June 13, 2017, to be heard in conjunction with a motion to reconsider. Dckt. 217. The hearing on this Motion is related to those proceedings, and a continuance is appropriate. The hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 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 June 21, 2017.

Final Ruling: No appearance at the May 31, 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 April 7, 2017. By the court’s calculation, 54 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 13 bankruptcy case of Abbigail Clymer (“Debtor”) has been filed by David Cusick (“Movant”), the Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the withdrawal of Debtor’s prior plan on February 28, 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).

DEBTOR’S OPPOSITION

Debtor filed a late Opposition on May 18, 2017. Dckt. 160. Debtor states that the sale of her home is scheduled for hearing on June 6, 2017. Debtor opposes dismissal of the case, but she consents to conversion to Chapter 7.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

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

DISCUSSION

Debtor withdrew a proposed plan at the February 28, 2017 hearing. Dckt. 116. No new one has been proposed since then, and the court has appoint Douglas Whatley to serve as a representative of the Estate to sell real property in this case. Dckt. 122. Based upon that possible sale and Debtor agreeing to conversion, the court determines that conversion to Chapter 7 is more beneficial to creditors and to the Estate than dismissal of this case. *See* 11 U.S.C. § 1307(c).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c). The Motion is granted, and the case is converted to a case 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 Convert 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

Final Ruling: No appearance at the May 31, 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 May 26, 2017, Dckt. 45; 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. 45, 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.

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 May 5, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 argues that Debtor is in material default under the Plan because Debtor failed, for the fifth time, to provide for all priority claims. The claims related to this Motion are those of the Employment Development Department, Claims 11 and 12, that claim priority in the amounts of \$621.81 and \$431.74, respectively. Section 2.13 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

WITHDRAWALS OF PROOFS OF CLAIM

Employment Development Department ("Creditor") filed a Withdrawal of Proof of Claim on May 22, 2017. Dckt. 179. Creditor withdrew Claim 12 in the amount of \$431.74.

Then, Creditor filed another Withdrawal of Proof of Claim on May 25, 2017. Dckt. 180. Creditor withdrew Claim 11 in the amount of \$686.16.

RULING

Creditor has withdrawn Claims 11 & 12, satisfying the Trustee's grounds for dismissal. Cause does not exist to dismiss this case. The Motion is denied.

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

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

The Motion to 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.

23.	<u>13-34713</u> -E-13 DPC-2	DAVID/RAMONA TAGUE W. Scott deBie	MOTION TO DISMISS CASE 5-1-17 <u>[34]</u>
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Final Ruling: No appearance at the May 31, 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 May 16, 2017, Dckt. 48; 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. 48, 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.

24. [15-20314](#)-E-13 FATEMA ZARIF MOTION TO DISMISS CASE
DPC-2 Rick Morin 5-2-17 [22]

Final Ruling: No appearance at the May 31, 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 May 17, 2017, Dckt. 29; 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. 29, 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.

25. [16-28316](#)-E-13 SHARRY STEVENS-GOREE MOTION TO DISMISS CASE
DPC-2 Gary Ray Fraley 4-7-17 [\[44\]](#)

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 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.**

26. [16-26617](#)-E-13 DARSEY/BESSIE VARNEDOE MOTION TO DISMISS CASE
DPC-2 Gary Ray Fraley 4-14-17 [\[24\]](#)

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 14, 2017. By the court's calculation, 47 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 Debtor is \$3,018.00 delinquent in plan payments (with another \$4,952.00 coming due before the hearing), which represents multiple months of the \$2,476.00 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 did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 6, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY AND DEBTOR'S NON-OPPOSITION

Debtor filed a Reply on May 17, 2017. Dckt. 28. Debtor promises to file an Amended Plan and set it for hearing on June 27, 2017.

Debtor filed a Non-Opposition on May 18, 2017. Dckt. 30. Debtor states that there is no basis to oppose the Motion. Debtor requests in the subsequent Non-Opposition that the Motion be granted.

RULING

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.

27.	<u>13-30919-E-13</u> DPC-1	BUN AUYEUNG AND SOO TSE Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 8-18-16 [254]
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Final Ruling: No appearance at the May 31, 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 an Amended Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dekts. 314 & 318. 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.

28.	<u>14-23319</u> -E-13 DPC-2	IRENE RENAUD Richard Chan	MOTION TO DISMISS CASE 5-2-17 <u>[37]</u>
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Final Ruling: No appearance at the May 31, 2017 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on May 19, 2017, Dckt. 44; 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. 44, 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.

29. [15-26319](#)-E-13 **VIRGINIA PAYTON** **MOTION TO DISMISS CASE**
DPC-2 Mary Ellen Terranella 5-3-17 [\[43\]](#)

Final Ruling: No appearance at the May 31, 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 May 19, 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.

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 May 3, 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 seeks dismissal of the case on the basis that Debtor is \$3,440.00 delinquent in plan payments (with another \$1,625.00 coming due before the hearing), which represents multiple months of the \$1,625.00 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 May 15, 2017. Dckt. 55. Debtor's counsel promises to file a modified plan before the hearing date.

RULING

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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. [16-27319-E-13](#) **MATTHEW/AMY PRINCE** **MOTION TO DISMISS CASE**
DPC-1 **Seth Hanson** **5-3-17 [15](#)**

Final Ruling: No appearance at the May 31, 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 May 3, 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 \$5,200.00 delinquent in plan payments (with another \$1,300.00 coming due before the hearing), which represents multiple months of the \$1,300.00 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.

32. [13-22820](#)-E-13 **KATHLEEN SINDELAR** **MOTION TO DISMISS CASE**
DPC-3 **Eric Schwab** **5-3-17 [108]**

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 May 3, 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 seeks dismissal of the case on the basis that Debtor is \$2,143.00 delinquent in plan payments to pay general unsecured claims an 11% dividend as called for by the plan confirmed on April 30, 2013. That failure is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on May 16, 2017. Dckt. 112. Debtor promises to file a modified plan on or before the hearing date.

RULING

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

[illegible]

Final Ruling: No appearance at the May 31, 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 March 29, 2017. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay \$77.00 due on March 21, 2017.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on April 7, 2017 (Dckt. 74), 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.

34. [17-22224](#)-E-13 LARRY/ELIZABETH RIZZIO ORDER TO SHOW CAUSE - FAILURE
 Pro Se TO PAY FEES
 5-8-17 [[15](#)]

Final Ruling: No appearance at the May 31, 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 May 10, 2017. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on May 3, 2017.

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

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

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

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

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

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

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 May 12, 2017. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 5, 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.

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 April 12, 2017. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on April 5, 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: \$79.00.

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

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

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

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

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

Local Rule 9014-1(f)(1) Motion—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 April 26, 2017. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$320.00 delinquent in plan payments (with another \$320.00 coming due before the hearing), which represents one month of the \$320.00 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 did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the 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 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 asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;
- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

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.

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 May 5, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,025.65 delinquent in plan payments (with another \$2,025.65 coming due before the hearing), which represents one month of the \$2,025.65 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 May 17, 2017. Dckt. 26. Debtor's counsel promises Debtor will be current by the hearing date.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. 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.

39. [17-20827](#)-E-13 **STEPHEN ALBERTS** **MOTION TO DISMISS CASE**
DPC-1 **Mikalah Liviakis** **5-3-17 [15]**

Final Ruling: No appearance at the May 31, 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.**

40. [13-33030](#)-E-13 **RICHARD/LINDA TRUESDELL** **MOTION TO DISMISS CASE**
DPC-1 **Mark Alonso** **5-1-17 [46]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

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

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

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 May 3, 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 seeks dismissal of the case on the basis that Debtor is \$4,020.22 delinquent in plan payments (with another \$1,005.37 coming due before the hearing), which represents multiple months of the \$1,005.37 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on May 17, 2017. Dckt. 32. Debtor promises to file a modified plan and set it for hearing on June 27, 2017.

RULING

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

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

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

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

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

42. [17-21730](#)-E-13 **MITCHELL LOGAN**
Lucas Garcia

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
5-11-17 [37]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, creditors, and Chapter 13 Trustee as stated on the Certificate of Service on May 13, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$30.00 due on April 27, 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: \$30.00.

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.

43. [17-21730](#)-E-13 MITCHELL LOGAN
Lucas Garcia

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
4-20-17 [[25](#)]

Final Ruling: No appearance at the May 31, 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 April 22, 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: \$79.00 due on April 17, 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 May 31, 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 May 4, 2017. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on April 27, 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 May 31, 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 May 18, 2017, Dckt. 26; 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. 26, 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.

46. [15-28234](#)-E-13 GREGORY/OTHELLA JONES MOTION TO DISMISS CASE
DPC-1 Stephen Murphy 5-3-17 [39]

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 3, 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on July 26, 2017.</p>

The Trustee seeks dismissal of the case on the basis that Debtor is \$16,097.21 delinquent in plan payments (with another \$6,976.00 coming due before the hearing), which represents multiple months of the \$6,976.00 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 May 17, 2017. Dckt. 43. Debtor reports they have less disposable income since retiring and since their mortgage payment increased. Debtor promises to file a modified plan and requests thirty days to prepare and file it.

STIPULATION

On May 19, 2017, Debtor and the Trustee filed a Stipulation agreeing to continue the hearing to 10:00 a.m. on July 26, 2017. Dckt. 46.

ORDER CONTINUING HEARING

On May 20, 2017, the court issued an order continuing the hearing to 10:00 a.m. on July 26, 2017. Dckt. 48.

47. [16-25534](#)-E-13 GENTRY/MARIA LONG MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 4-19-17 [[19](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 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.**

48. [15-20335](#)-E-13 MARK/GINALYN CHANG MOTION TO DISMISS CASE
DPC-3 Matthew Eason 5-3-17 [[43](#)]

Final Ruling: No appearance at the May 31, 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 May 3, 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 \$4,068.75 delinquent in plan payments (with another \$2,138.05 coming due before the hearing), which represents multiple months of the \$2,138.05 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.

49. [13-22637](#)-E-13 **DARREN/EMILY DIVER** **MOTION TO DISMISS CASE**
DPC-1 Michael Hays 5-2-17 [\[77\]](#)

Final Ruling: No appearance at the May 31, 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 May 18, 2017, Dckt. 83; 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. 83, 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.

50. [15-22239-E-13](#) **ROBERT/SANDRA RYAN** **MOTION TO DISMISS CASE**
DPC-1 **Matthew DeCaminada** **5-2-17 [28]**

Final Ruling: No appearance at the May 31, 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 May 15, 2017, Dckt. 42; 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. 42, 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 May 31, 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 May 26, 2017, Dckt. 81; 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. 81, 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 May 2, 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).

<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 \$2,605.28 delinquent in plan payments (with another \$1,318.82 coming due before the hearing), which represents multiple months of the \$1,318.82 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 May 15, 2017. Dckt. 38. Debtor's counsel promises Debtor will be current by the hearing.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. 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. [14-24643](#)-E-13 LAQUETA MARTIN MOTION TO DISMISS CASE
DPC-9 Susan Dodds 5-2-17 [[127](#)]

Final Ruling: No appearance at the May 31, 2017 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on May 26, 2017, Dckt. 133; 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. 133, 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 May 31, 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 May 2, 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). 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 \$880.00 delinquent in plan payments (with another \$440.00 coming due before the hearing), which represents multiple months of the \$440.00 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.

**APPEARANCE OF TED GREENE, AUBREY JACOBSEN, SUSAN
GEDNEY, AND DAWN ROBINSON
REQUIRED FOR THE MAY 31, 2017 HEARING**

NO TELEPHONIC APPEARANCES PERMITTED

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Employ 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Employ is ~~XXXXX~~.

Susan Gedney ("Debtor") seeks to employ realtor Dawn Robinson of JCL Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of a realtor to assist with short selling her property.

Debtor argues that the realtor's appointment and retention is necessary because the Chapter 13 Plan contemplates the short sale of her property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 105. The Trustee states that there is a pending adversary proceeding (No. 17-02006) dealing with a prior real estate listing agreement between Debtor and realtor Sarah Wright and broker Gabriel Witkin.

The Trustee notes that JCL Realty, Inc. is owned by Ted Greene who is also the owner of Law office of Ted A. Greene, Inc., who represents Debtor in this Chapter 13 case.

The Trustee does not oppose the Motion.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, specially set with the court's Chapter 13 dismissal calendar. Dckt. 119. The court ordered Ted Greene, Aubrey Jacobsen, Susan Gedney, and Dawn Robinson to appear personally at the continued hearing.

DISCUSSION

No further pleadings have been filed since the May 9, 2017 hearing.

Dawn Robinson, realtor with JCL Realty, Inc., testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. She testifies that her fee for selling Debtor's property will be 3.5% of the purchase price.

This case has had an interesting dynamic in which the real estate broker that Debtor hired pre-petition was determined post-petition to "not be qualified." No mention was made during the long, multiple hearings that the new, better realtor was one owned by Debtor's attorney, Ted Greene. Though Mr. Greene has a new, young associate appearing as attorney of record in this case, it is his law firm that has Debtor as the client. Mr. Greene's name appears on all the pleadings.

The court is concerned whether Mr. Greene and his firm can fulfill their duties as counsel to the Debtor, who is the fiduciary to the bankruptcy estate and will be the fiduciary under a Chapter 13 Plan (if one can be confirmed). The court is unsure how Mr. Greene and his firm can represent Debtor and advise Debtor as to the performance by Mr. Greene's real estate company, advocating for her with Mr. Greene's real estate company.

The pleadings also do not contain evidence showing compliance with California Rule of Professional Conduct 3-300.

At the continued hearing, the parties reported **XXXXX**.

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

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

The Motion to Employ filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Employ is **XXXXX**.

56. [13-20944-E-13](#) **DEBRA WARRINGTON** **MOTION TO DISMISS CASE**
DPC-1 **Robert Fong** **5-1-17 [37]**

Final Ruling: No appearance at the May 31, 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 May 15, 2017, Dckt. 44; 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. 44, 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 May 3, 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 argues that Debtor is in material default under the Plan because Debtor has not provided for the priority claim of the Employment Development Department and because the Plan will not complete in sixty months. Sections 2.13 and 5.03 of the Plan make those failures breaches of the Plan in addition to violating the Bankruptcy Code. Failure to provide for all claims timely puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 16, 2017. Dckt. 25. Debtor promises to file a modified plan to account for the priority claim.

Though Debtor has filed a proposed modified plan and motion to confirm, the declaration filed in support of the motion to confirm makes Debtor's credibility suspect. Debtor states under penalty of perjury:

A. "7. The Chapter 13 Plan complies with applicable law."

No basis is provided for Debtor stating this personal legal conclusion of law as Debtor's personal knowledge testimony under penalty of perjury.

B. "9. The Plan is proposed in good faith and is not by any means forbidden by law."

No basis is provided for Debtor stating this personal legal conclusion of law as Debtor's personal knowledge testimony under penalty of perjury.

- C. "10. Unsecured creditors will receive at least what they would receive in the event of a Chapter 7 liquidation."

No basis is provided for Debtor stating this personal legal conclusion of law and personal finding of fact as Debtor's personal knowledge testimony under penalty of perjury.

- D. "11. All secured creditors provided for have either accepted the plan, I will be surrendering the property securing their claims, or the plan provides to pay the creditors pursuant to section 1325(a)(5)(B)."

It appears that Debtor has no personal knowledge as to what the Chapter 13 Plan provides, but merely will parrot this statutory provision of the Bankruptcy Code.

- E. "12. The First Modified Plan meets the requirements under 11 U.S.C. §§ 1325 and 1322."

No basis is provided for Debtor stating this personal legal conclusion of law as Debtor's personal knowledge testimony under penalty of perjury.

- F. "13. The First Modified Plan meets the requirements of CMI required under 11 U.S.C. § 1325(b)(1)."

No basis is provided for Debtor stating this personal legal conclusion of law and personal finding of fact as Debtor's personal knowledge testimony under penalty of perjury.

- G. "14. I will be able to make the payments under the plan and comply with the plan."

No basis is provided for Debtor stating this personal finding of fact as Debtor's personal knowledge testimony under penalty of perjury.

- H. "15. The petition was filed in good faith."

No basis is provided for Debtor stating this personal legal conclusion of law as Debtor's personal knowledge testimony under penalty of perjury.

Declaration, Dckt. 30.

The inference the court draws from this "testimony" is that Debtor and counsel are ambivalent as to the truth of the statements made under penalty of perjury. Rather, it appears that Debtor is willing to sign the Declaration without bothering to read it and actually provide the testimony, having been assured by counsel, "If You Sign This – YOU WIN!!!!"

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence of filing a modified plan. Even with the Plan filed, Debtor's statements under penalty of perjury do not reflect a good faith prosecution of this case.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

58.	<u>17-20844-E-13</u>	SAMUEL CERVANTES Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-17-17 <u>18</u>
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Final Ruling: No appearance at the May 31, 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 19, 2017. The court computes that 73 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 March 13, 2017.

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

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

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

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

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

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

59. 17-20844-E-13 **SAMUEL CERVANTES** **MOTION TO DISMISS CASE**
 DPC-2 **Pro Se** **3-29-17 [24]**

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on March 29, 2017. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$150.00 delinquent in plan payments (with another \$300.00 coming due before the hearing), which represents one month of the \$150.00 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 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 argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

60.	<u>17-20245-E-13</u>	MARK BRADY Michael Benavides	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-23-17 [24]
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Final Ruling: No appearance at the May 31, 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 25, 2017. The court computes that 67 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 March 20, 2017.

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

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

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

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

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

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

61. [17-20245-E-13](#) **MARK BRADY** **MOTION TO DISMISS CASE**
DPC-1 **Michael Benavides** **4-14-17 [32]**

Final Ruling: No appearance at the May 31, 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 April 14, 2017. By the court's calculation, 47 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 \$1,490.00 delinquent in plan payments (with another \$3,140.00 coming due before the hearing), which represents less than one month of the \$1,570.00 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.

62.	<u>17-21345</u> -E-13	WILLIAM MCDANIELS JR. Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-5-17 [34]
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Final Ruling: No appearance at the May 31 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 May 7, 2017. The court computes that 24 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 1, 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 subsection of the Order to Show Cause has been cured.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 1, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

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 argues that Debtor did not commence making plan payments and is \$230.00 delinquent in plan payments, which represents one month of the \$230.00 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 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 Trustee states that Debtor was not clear why relief was being sought. The Trustee states that Debtor referred to a balance of \$43,800.00, but does not disclose this balance; other debts add up to only \$1,575.00. The Trustee also alleges that Debtor may be in default on his \$393,200.00 mortgage to Caliber Home Loans and Trustee Corps.

Review of Court's Files

The court notes that this is Debtor's second recent case filing. The prior case, 16-28113, was filed on December 9, 2016, and dismissed on December 20, 2016. The case was dismissed for failure to file documents. It appears that Debtor filed the documents, including a plan, in the prior case several days after it was dismissed. The filing of the current case followed the dismissal.

The Chapter 13 Plan filed in this case provides for a \$230.00 per month payment for thirty-six months. Plan, Dckt. 13. The various classes for payment of claims in the required plan form are left blank, with a "To the Court" typewritten page inserted between pages one and two of the Chapter 13 Plan. The inserted page states:

- A. Debtor has \$230 a month of disposable income;
- B. Debtor seeks to make the \$230 a month payment for three years;
- C. How that money will be distributed to creditors is not provided;
- D. Debtor seeks to improve his credit, "with the option of financing my balance of \$43,800.00 in a 2nd deed of trust."

On Schedule A/B, Debtor lists owing property on Oakenshield Circle (the "Property") with a value of \$393,000. Dckt. 14 at 1. On Schedule D Debtor lists Caliber Home Loans as having a \$393,200 claim secured by the Property, but states that the value of the Property as collateral is only \$279,000. *Id.* at 17.

On Schedule J, Debtor lists having a \$1,750.00 per month mortgage/rent payment and a \$200 per month property insurance payment. No amount is included for property taxes. *Id.* at 22.

While Debtor may be attempting to avoid some negative financial consequence (such as a foreclosure) the court cannot identify what it is from the documents filed in this case or the Chapter 13 Plan. It appears that the "plan" is to put everyone's rights on hiatus for thirty-six months while Debtor allows the situation to improve.

FEBRUARY 22, 2017 HEARING

Debtor appeared at the hearing and advised the court that he now appreciates the need to engage experienced counsel to assist him in any restructuring through Chapter 13. Dckt. 34. He requested that the hearing be continued so that he may engage and work with such counsel. He represented that he had already scheduled an appointment for later in the day.

The court granted Debtor's request to afford him the opportunity to, with the assistance of counsel, prosecute this case. The court continued the hearing to 10:00 a.m. on May 31, 2017.

TRUSTEE'S SUPPLEMENTAL DECLARATION

The Trustee's employee, Christina Lloyd, filed a Supplemental Declaration on May 10, 2017. Dckt. 44. The Declaration states that Debtor did not appear at the Meeting of Creditors scheduled for March 23, 2017 (which has been continued to June 22, 2017), he has not made any plan payments, he has not provided copies of his most recent tax returns, and the docket does not show that Debtor has hired an attorney.

RULING

Despite the court offering Debtor time to hire an attorney and cure the various defaults, Debtor has failed to do so. Cause exists to dismiss the case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having 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 May 31, 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 May 2, 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). 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 \$3,072.30 delinquent in plan payments (with another \$2,762.05 coming due before the hearing), which represents multiple months of the \$2,762.05 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the May 31, 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 May 17, 2017, Dckt. 79; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 79, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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).

<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 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.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, on the understanding that Debtor would have cured the default or would be prosecuting confirmation of a modified plan. Dckt. 81.

DEBTOR'S STATUS UPDATE

Debtor filed a Status Update on May 17, 2017. Dckt. 82. Debtor states that the April 2017 payment has been made and expects to submit the May 2017 payment on May 30, 2017.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. 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 May 31, 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 May 3, 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 \$3,804.08 delinquent in plan payments (with another \$1,270.00 coming due before the hearing), which represents multiple months of the \$1,270.00 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.

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 May 3, 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 Debtor is \$485.00 delinquent in plan payments (with another \$130.00 coming due before the hearing), which represents multiple months of the \$130.00 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 May 15, 2017. Dckt. 34. Debtor's attorney promises Debtor will be current on or before the hearing.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. 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.

69. [15-24851](#)-E-13 **WALTER ALLEN**
DPC-1 Timothy Walsh

**CONTINUED MOTION TO DISMISS
CASE
3-1-17 [30]**

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 2017.</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.

PRIOR 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.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, to allow Debtor to prosecute a motion to confirm, including filing a supplemental declaration. Dckt. 41.

DEBTOR’S OPPOSITION AND REQUEST FOR CONTINUANCE

Debtor filed an Opposition on May 15, 2017. Dckt. 55. Debtor’s Counsel states that Debtor opposes the Motion—without giving any reason—and notes that there is a motion for Debtor’s Counsel to withdraw set for hearing at 3:00 p.m. on June 6, 2017. Debtor’s Counsel states that Debtor may be unable to process a modified plan before that date, and he requests a continuance to a hearing time after June 6, 2017.

RULING

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.

Debtor’s Counsel has indicated that he will be moving to withdraw as attorney at the June 6, 2017 hearing. The court believes that review of that matter is appropriate before ruling on this Motion. Debtor has requested a continuance, and the court agrees. The hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 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 June 21, 2017.

70. [15-27951](#)-E-13 **NICOLE KIMBROUGH** **MOTION TO DISMISS CASE**
DPC-1 **Mark Wolff** **5-3-17 [34]**

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 3, 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 July 26, 2017.
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The Trustee argues that Debtor is in material default under the Plan because Debtor has not adjusted the plan payment after the filing of a Notice of Mortgage Payment Change. Section 2.08(b)(4)(I) of the Plan makes that failure a breach of the Plan. Failure to provide for the increase puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,821.26 delinquent in plan payments because of not increasing plan payments. 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 May 17, 2017. Dckt. 38. Debtor states that she will be filing an Objection to Notice of Mortgage Payment Change and will set it for hearing on July 11, 2017. Debtor requests that the court continue the hearing on this Motion until after the Objection is considered.

RULING

Debtor argues that she opposes the Notice of Mortgage Payment Change that caused the Trustee to bring this Motion. Ruling on this Motion would not be appropriate until the court hears the objection.

The Objection has been filed and set for hearing on July 11, 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 July 26, 2017.

71.	<u>16-27851</u> -E-13 DPC-2	ALFREDO ALMADA Matthew DeCaminada	MOTION TO DISMISS CASE 4-14-17 [28]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 14, 2017. By the court's calculation, 47 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 file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 28, 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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 19, 2017. Dckt. 32. Debtor anticipates that the Internal Revenue Service will amend its claim based upon Debtor's 2013 federal income tax return that has been submitted for review. Debtor believes that a modified plan will be filed before the hearing date for this Motion.

RULING

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 12, 2017. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on May 5, 2017.

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

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

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

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

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

Final Ruling: No appearance at the May 31, 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 27, 2017. By the court's calculation, 65 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 argues that Debtor did not commence making plan payments and has not proposed to make any according to the plan filed on February 17, 2017. 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 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 argues that Debtor did not notice all interested parties of the Chapter 13 Plan and set a confirmation hearing. 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).

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update on May 18, 2017. Dckt. 81. The Trustee reports that Debtor did not appear at the continued Meeting of Creditors on April 6, 2017, or on May 4, 2017. Debtor has not made plan payments still, and Debtor's plan has not been served.

The Trustee states that he received a telephone call from Debtor's attorney on May 5, 2017, advising that he is ill and has been in and out of the hospital, which has hindered his ability to adequately represent debtors at this time.

RULING

While the health of Debtor's attorney is unfortunate, Debtor has failed to appear at the Meeting of Creditors several times and has not made any plan payments to the Trustee. 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 May 31, 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 May 3, 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 \$5,271.96 delinquent in plan payments (with another \$1,775.96 coming due before the hearing), which represents multiple months of the \$1,775.96 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.

75. [16-25253](#)-E-13 **DANIEL HOBBS AND LISA** **MOTION TO DISMISS CASE**
DPC-2 **MILLER-HOBBS** **5-3-17 [39]**
 Lauren Rode

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 May 3, 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 Debtor is \$11,632.24 delinquent in plan payments (with another \$5,908.06 coming due before the hearing), which represents multiple months of the \$5,908.06 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 May 17, 2017. Dckt. 43. Debtor's attorneys argues that Debtor hopes to be current with plan payments by the hearing date.

RULING

Unfortunately for Debtor, hoping to cure the delinquency is not evidence of payment. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

76.	<u>16-21854</u> -E-13 DPC-2	KENNETH TABOR Stephen Murphy	CONTINUED MOTION TO DISMISS CASE 3-1-17 [<u>131</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

MARCH 29, 2017 HEARING

At the hearing, the Trustee agreed to a continuance of this Motion. The court continued the hearing to 10:00 a.m. on May 31, 2017. Dckt. 138.

RULING

No party has filed further pleadings since the March 29, 2017 hearing. There is cause to dismiss the case because of the outstanding delinquency. 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 is granted, and the case is dismissed.

77.	<u>13-24756</u> -E-7 DPC-2	JEFFREY/TINA SOOTER Robert Huckaby	MOTION TO DISMISS CASE 5-1-17 [119]
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WITHDRAWN BY M.P.
CASE CONVERTED 02/06/2017

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on May 10, 2017, Dckt. 125; 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 conversion of the case to Chapter 7; 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. 125, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

78. [15-23156](#)-E-13 **GUILLERMO/LURDES MEDINA** **MOTION TO DISMISS CASE**
DPC-2 **Joseph Canning** **5-2-17 [48]**

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 May 2, 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).

<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 \$5,500.00 delinquent in plan payments (with another \$2,750.00 coming due before the hearing), which represents multiple months of the \$2,750.00 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 May 17, 2017. Dckt. 52. Debtor states that a partial payment has been made, and Debtor hopes to be current by the hearing date. Declaration, Dckt. 53.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. 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.

79.	<u>15-25257-E-13</u> DPC-4	MEGAN CARR Mikalah Liviakis	MOTION TO DISMISS CASE 5-3-17 <u>[77]</u>
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Final Ruling: No appearance at the May 31, 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 May 3, 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 \$890.00 delinquent in plan payments (with another \$440.00 coming due before the hearing), which represents multiple months of the \$440.00 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.

80.	<u>17-22357</u> -E-13	KAYLENE RICHARDS-EKEH Chinonye Ugorji	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 4-21-17 <u>17</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. 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 April 23, 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 the required fees in this case: \$310.00 due on April 7, 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 subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$310.00.

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

Final Ruling: No appearance at the May 31, 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 May 3, 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: \$77.00 due on April 25, 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.

83. [17-20460](#)-E-13 STACY JOHNSON
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-31-17 [33]**

Final Ruling: No appearance at the May 31, 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 April 2, 2017. The court computes that 59 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 27, 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 subjection of the Order to Show Cause has been cured.

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

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

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

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

Final Ruling: No appearance at the May 31, 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 May 16, 2017, Dckt. 74; 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. 74, 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 May 31, 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 May 18, 2017, Dckt. 36; 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. 36, 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 May 31, 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 May 1, 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 seeks dismissal of the case on the basis that Debtor is \$6,028.00 delinquent in plan payments (with another \$2,010.00 coming due before the hearing), which represents multiple months of the \$2,010.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the May 31, 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 May 23, 2017, Dckt. 55; 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. 55, 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 May 3, 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 Debtor is \$4,910.00 delinquent in plan payments (with another \$2,470.00 coming due before the hearing), which represents multiple months of the \$2,470.00 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 May 15, 2017. Dckt. 63. Debtor promises to be current on or before the hearing.

RULING

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

89. [16-28365](#)-E-13 **BARBARA GIAMMARCO** **MOTION TO DISMISS CASE**
DPC-2 **Lucas Garcia** **5-2-17 [35]**

Final Ruling: No appearance at the May 31, 2017 hearing is required.

Sufficient Notice Provided: Notice of the Motion was given by Debtor and other parties in interest, with 29 days notice provided. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on July 26, 2017.</p>

Debtor has filed an Amended Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 39 & 42. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

TRUSTEE'S RESPONSE

The Trustee filed a Response on May 22, 2017. Dckt. 48. The Trustee states that Debtor is \$778.23 delinquent in plan payments under the amended plan.

RULING

Debtor appears to be actively prosecuting this case, but potential grounds to dismiss still exist. Giving Debtor the benefit of the doubt, the hearing is continued.

The court shall issue a minute order 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 July 26, 2017.

90. [15-26266](#)-E-13 **RICHARD BLOOMFIELD** **MOTION TO DISMISS CASE**
DPC-1 **Seth Hanson** **5-3-17 [21]**

Final Ruling: No appearance at the May 31, 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 May 19, 2017, Dckt. 32; 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. 32, 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 May 3, 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 argues that Debtor is in material default under the Plan because the Plan will not complete within sixty months, which was caused by filed claims being \$12,859.12 more than scheduled. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on May 16, 2017. Dckt. 51. Debtor promises to file a modified plan before or on the hearing date.

RULING

Unfortunately for Debtor, a promise to file a modified plan is not evidence of filing a modified plan.

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

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

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

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

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

92. 15-23668-E-13 **JUAN/GENEVA GOMEZ** **MOTION TO DISMISS CASE**
 DPC-3 **Mary Ellen Terranella** **5-3-17 [94]**

Final Ruling: No appearance at the May 31, 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 Debtor. Dckts. 98 & 100. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

93. [13-36169](#)-E-13 CATHERINE NELSON MOTION TO DISMISS CASE
DPC-1 Richard Chan 5-2-17 [\[26\]](#)

Final Ruling: No appearance at the May 31, 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 May 16, 2017, Dckt. 33; 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. 33, 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.

94. [15-26469](#)-E-13 LAURIE STEFANELLI MOTION TO DISMISS CASE
DPC-1 Matthew Eason 5-2-17 [\[40\]](#)

Final Ruling: No appearance at the May 31, 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.**

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 May 3, 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 XXXXXXXXXXXXXXXXXXXX.
--

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

DEBTOR’S PLEADING

Debtor filed a Pleading on May 4, 2017. Dckt. 137. The Pleading was filed by Debtor herself, purportedly acting in *pro se*. Debtor is represented by legal counsel in this bankruptcy case, however.

The Pleading has been docketed as part of this Motion, and it appears to be in opposition to the Trustee’s Motion. The Pleading states:

- A. “I am doing this alone as can’t wait for appt w/ Mr Macaluso.”
- B. “My health . . . Lindsey saw problem” (ellipses in original)
- C. “Kim Remp is delayed in exchaning properties.”
- D. “Week or so, maybe more [phone number].”
- E. “She’s LTC retired”

- F. “The other RATS (national order of trench rats needed info Weintraub & DFI unwilling) as Drs Raba & Grassell.”
- G. “Got robbed again.”
- H. “Even paid last month fubared [sic]”
- I. “I need for FTB & IRS letters requested DFI.”
- J. “Worked before but every other year believe my interest to DFI means I have nearly 75K unreported income.”

Dckt. 137.

DEBTOR’S OPPOSITION

Debtor, through counsel, filed an Opposition on May 16, 2017. Dckt. 139. Debtor promises to be current on plan payments on or before the hearing.

DISCUSSION

Before discussing the Motion, the court notes first that Debtor is represented by counsel of record Peter Macaluso, and her counsel must be the person to submit pleadings. Debtor signed the Pleading and included her contact information. Her counsel’s name and contact information are not listed in the upper left hand corner in violation of Federal Rule of Bankruptcy Procedure 9011(a). Fortunately for Debtor, her legal counsel filed an Opposition.

Unfortunately for Debtor, a promise to cure the delinquency is not evidence of payment. Cause exists to dismiss this case.

As discussed at prior hearings, Debtor’s efforts in this case are challenged by some health issues. Such raise the issue of whether the bankruptcy case should be dismissed or converted. Further, there is a consideration whether it would be possible to appoint a personal representative pursuant to Federal Rule of Civil Procedure 25 to stand in the place of Debtor in this case, or to be appointed for limited purposes to complete discrete transactions that Debtor’s health issues may limit her ability to accomplish.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

The Motion is **XXXXXXXXXXXXXX**.

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

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

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

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

96. 16-28172-E-13 **PHOUNAKHONE** **MOTION TO DISMISS CASE**
 DPC-1 **KHOMSONERASINH** **5-3-17 [25]**
 Chad Johnson

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 May 3, 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 Debtor is \$5,600.00 delinquent in plan payments (with another \$2,800.00 coming due before the hearing), which represents multiple months of the \$2,800.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on May 17, 2017. Dckt. 29. Debtor promises to file a modified plan before the hearing date.

RULING

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

97. [12-36273](#)-E-13 **CHRISTOPHER SCHUMACHER MOTION TO DISMISS CASE**
DPC-1 **AND AMY PATON 5-1-17 [47]**
 Peter Macaluso

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on May 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.

98. [15-27773](#)-E-13 KATE KERNER MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 5-3-17 [[53](#)]

Final Ruling: No appearance at the May 31, 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 May 16, 2017, Dckt. 59; 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. 59, 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.

99. [17-20373](#)-E-13 FLOYDETTE JAMES
DPC-2 Steven Alpert

CONTINUED MOTION TO DISMISS
CASE
3-1-17 [37]

Final Ruling: No appearance at the May 31, 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 May 1, 2017, Dckt. 57; 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. 57, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) 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 (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Trustee argues that Debtor did not commence making plan payments and 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. 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 not provided the Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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—2015. *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).

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.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017. Dckt. 72.

RULING

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.

101. [16-27675-E-13](#) DAWN BASURTO
Pro Se

CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
2-21-17 [[52](#)]

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

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 subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017. Dckt. 73.

RULING

The default in payment has not 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 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.

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: \$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.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017. Dckt. 74.

RULING

The default in payment has not 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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

103. [16-27675-E-13](#) **DAWN BASURTO**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-23-17 [62]**

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 March 25, 2017. The court computes that 67 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 20, 2017.

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

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. 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.

104. [16-27675](#)-E-13 **DAWN BASURTO**
UST-1 Pro Se

**CONTINUED MOTION FOR
ASSESSMENT OF FINES AGAINST, AND
FOR FORFEITURE OF FEES BY, DIANE
LORE, PURSUANT TO 11 U.S.C. § 167; 110
3-24-17 [64]**

**APPEARANCE OF DIANE LORE REQUIRED AT MAY 31, 2017
HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Diane Lore, Debtor (*pro se*), Chapter 13 Trustee, and parties requesting special notice on March 24, 2017. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

The Motion to Assess Fines and Forfeiture of Fees is ~~XXXXX~~.

On March 24, 2017, the U.S. Trustee (“UST”) filed a Motion for the Assessment of Fines Against and Forfeiture of Fees Paid to Diane Lore (“Lore”). Dckt. 64. The Motion asserts that Lore charged Dawn Basurto (“Debtor”) and Anthony Basurto \$9,000.00 to do “loan modification work” and prepare six bankruptcy cases for them.

The Motion asserts that Lore’s participation was hidden from the court, UST, and other parties in interest on the various bankruptcy cases filed. Further, the Motion asserts that Lore failed to comply with the disclosure and information requirements for a person assisting in the preparation of bankruptcy documents.

In her declaration, Judith Hotze of the UST’s Office refers the court to a prior determination that Lore was in violation of 11 U.S.C. § 110, with this court imposing \$24,300.00 in fines and penalties in the *Valerie Jean Keys* bankruptcy case. No. 13-22393. The court’s order in the *Keys* bankruptcy case was entered on January 21, 2014—now more than three years ago. No. 13-22393; Order, Dckt. 81. The testimony is that Lore has not paid any of the amounts ordered by the court in January 2014.

The fees paid by the Basurtoes in the current case at issue are asserted to have been received by Lore over an eighteen-month period beginning with the first bankruptcy case (No. 15-28915) being filed on November 17, 2015 (twenty-three months after this court’s January 21, 2014 Order addressing Lore’s failure to comply with bankruptcy laws).

***Ex Parte* Motion to Continue Hearing**

On April 25, 2017, Lore filed an *ex parte* motion to continue the May 9, 2017 hearing on the UST’s motion. Dckt. 75. The grounds stated with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013 in the *ex parte* motion are:

- A. “I Diane Lore request for an continuance of this matter and to be continued for (30) days in order for me to gather supporting documents for my case.”
- B. At this time I am looking for counsel to represent me in this case.”

Id.

In the *Keys* case, though the court continued the hearing on that motion, Lore failed to file any responsive pleadings or appear to address the issues presented to the court.

Continuance of Hearing and Issuance of Order to Appear

The court continued the hearing on the Motion for two reasons. Dckt. 76. First, for the May 9, 2017 hearing date, another judge would be hearing the matter. In light of the prior order in the *Keys* case, it made sense for the same judge that issued that order to consider the present Motion.

Second, it may well be that Lore does not fully appreciate the seriousness of the allegations in the Motion, as well as the prior findings of this court in issuing the January 2014 Order in the *Keys* case.

The declarations provided by Debtor and Anthony Basurto include testimony indicating that Lore instructed the Basurtoes to give false testimony in federal court. The testimony includes contentions that Lore, not an attorney, provided legal advice to the Basurtoes. The testimony includes statements that Lore was paid money in advance to work on a loan modification. *See* Cal. Civ. 2944.7. The testimony includes statements that Lore was in league with “[a]ttorneys who work with me don’t want people to know they are doing it.” Dckt. 69, 5:20–21.

The above may violate federal and state law for which reporting to the respective authorities, including the California State Bar, may be appropriate. Before doing so, the court wants to ensure that Lore understands the seriousness of the allegations made and possible repercussions—which would not merely be an order to pay money that Lore could try to ignore.

Therefore, the court determined that the appropriate action was to continue the hearing to allow Lore, and her counsel if she so chooses, to respond to the allegations and address the situation. The court continued the hearing on the Motion to 10:00 a.m. on May 31, 2017, specially set with the court’s Chapter 13 dismissal calendar, and ordered Lore to appear personally at the hearing.

The court warned that failure to appear at the May 31, 2017 hearing will result in the issuance of an order for the U.S. Marshal to place Lore in custody (sufficiently in advance of the continued hearing date to ensure her availability to address the court) and escort her to the court for the hearing as further continued by the court.

The court ordered that any opposition to the Motion from Lore must be filed and served on or before May 24, 2017.

MAY 9, 2017 HEARING

The court noted that an Order on the *Ex Parte* Motion had been issued, continuing the matter from the May 9, 2017 hearing. Dckt. 78. The hearing on the Motion was continued to 10:00 a.m. on May 31, 2017.

MAY 31, 2017 HEARING

Though having continued the hearing and providing Ms. Lore time to file a response, nothing has been filed. Ms. Lore was able to file documents seeking to have this Contested Matter delayed, so there is not a lack of ability to file a response. Rather, it appears that Ms. Lore is electing to “ignore” the issues raised by the U.S. Trustee, hoping they will go away.

At the hearing, Ms. Lore presented to the court that **xxxxxx**.

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

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

The Motion to Assess Fines and Forfeiture of Fees filed by the United States 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 Assess Fines and Forfeiture of Fees is **XXXXX**.

105. [16-26177-E-13](#) **MICHAEL/PAULA NEHER** **MOTION TO DISMISS CASE**
DPC-3 **Douglas Jacobs** **5-2-17 [60]**

Final Ruling: No appearance at the May 31, 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 May 2, 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). 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 April 4, 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.

106. [14-30278](#)-E-13 **GARY SHREVES AND KAREN** **MOTION TO DISMISS CASE**
DPC-5 **BAYSINGER- SHREVES** **5-2-17 [184]**
Mark Wolff

Final Ruling: No appearance at the May 31, 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 May 19, 2017, Dckt. 196; 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. 196, 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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on April 9, 2017. The court computes that 52 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: \$56.00 due on April 3, 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: \$56.00.

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 May 10, 2017. The court computes that 21 days' notice has been provided.

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

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 April 14, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$5,967.23 delinquent in plan payments (with another \$11,934.46 coming due before the hearing), which represents one month of the \$5,967.23 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 provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); FED. R. BANKR. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

- A. Questionnaire,
- B. Six months of profit and loss statements, and
- C. Six months of bank account statements.

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.

110. [16-23279-E-13](#) **SANDRA PENNIX** **MOTION TO DISMISS CASE**
DPC-2 **Michael Benavides** **5-3-17 [40]**

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 May 3, 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 seeks dismissal of the case on the basis that Debtor is \$1,338.00 delinquent in plan payments (with another \$669.00 coming due before the hearing), which represents multiple months of the \$669.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 17, 2017. Dckt. 44. Debtor believes that she can cure the delinquency by the hearing date.

RULING

Unfortunately for Debtor, a belief that she can cure the delinquency is not evidence of payment. 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.

111. [14-25181](#)-E-13 **MICHAEL/CLAIRE STANLEY** **MOTION TO DISMISS CASE**
DPC-2 Peter Macaluso 5-2-17 [39]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on May 15, 2017, Dckt. 45; 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. 45, 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.

112. [12-27182](#)-E-13 **LISA BENNETT** **MOTION TO DISMISS CASE**
DPC-2 **Marc Caraska** **5-5-17 [115]**

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 May 5, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,068.32 delinquent in plan payments (with nothing more coming due before the hearing), which represents multiple months of the \$1,044.16 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.

113.	<u>13-34582-E-13</u> DPC-1	LISA RAVAZZOLO Peter Macaluso	MOTION TO DISMISS CASE 5-1-17 <u>[26]</u>
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Final Ruling: No appearance at the May 31, 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 May 19, 2017, Dckt. 42; 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. 42, 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.

114. [15-28582](#)-E-13 LYNN SANSOM MOTION TO DISMISS CASE
DPC-2 Gerald Glazer 5-3-17 [[66](#)]

Final Ruling: No appearance at the May 31, 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 May 24, 2017, Dckt. 74; 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. 74, 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.

115. [13-22083](#)-E-13
DPC-4

CYNTHIA BAKER
Peter Macaluso

MOTION TO DISMISS CASE
5-2-17 [61]

Final Ruling: No appearance at the May 31, 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 May 26, 2017, Dckt. 73; 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. 73, 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 May 31, 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 May 2, 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). 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 \$756.83 delinquent in plan payments (with another \$225.00 coming due before the hearing), which represents multiple months of the \$225.00 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.

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 May 2, 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).

<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 \$3,400.00 delinquent in plan payments (with another \$1,700.00 coming due before the hearing), which represents multiple months of the \$1,700.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Debtor filed a Reply on May 16, 2017. Dckt. 165. Debtor promises to cure the delinquent amount before the hearing.

RULING

Unfortunately for Debtor, a promise to pay is not evidence of payment. 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.

118. [14-29688](#)-E-13 **MARVIN/DARYL GARDNER** **CONTINUED MOTION TO DISMISS**
DPC-3 **Julius Engel** **CASE**
3-1-17 [[70](#)]

Final Ruling: No appearance at the May 31, 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 May 23, 2017, Dckt. 77; 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. 77, 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 May 31, 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 May 2, 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). 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 \$6,940.00 delinquent in plan payments (with another \$1,735.00 coming due before the hearing), which represents multiple months of the \$1,735.00 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.

120. [15-21394](#)-E-13 **MICHAEL/JENNIFER** **MOTION TO DISMISS CASE**
DPC-1 **WOODWARD** **5-2-17 [34]**
 Mikalah Liviakis

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 31, 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.**

121. [15-27295](#)-E-13 **ERROL/ALITA MERCADO** **MOTION TO DISMISS CASE**
DPC-3 **Richard Jare** **5-2-17 [91]**

Final Ruling: No appearance at the May 31, 2017 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 2, 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).

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 2017.</p>

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,350.00 delinquent in plan payments (with another \$450.00 coming due before the hearing), which represents multiple months of the \$450.00 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 May 17, 2017. Dckt. 95. Debtor argues that some of the delinquency has been cured, and more can be paid soon. Debtor's attorney argues that Debtor may not need

to propose a modified plan, and he requests a conditional order allowing Debtor to cure the delinquency no later than ten days after the hearing.

RULING

Despite the contention by Debtor's attorney that a modified plan may not be necessary, Debtor is delinquent. A promise to cure the delinquency is not evidence that payment has been made. Cause exists to dismiss this case.

However, Debtor has provided a candid opposition, supported by personal knowledge testimony. This indicates that Debtor and counsel are serious in the prosecution of this case.

Giving Debtor the benefit of the doubt, the court continues the hearing. This gives Debtor and Debtor's counsel additional time to address these matters with the Chapter 13 Trustee.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on June 21, 2017.

122.	<u>14-21396</u> -E-13 DPC-1	TERRY/LINDSEY GIBSON Lucas Garcia	MOTION TO DISMISS CASE 5-3-17 <u>[37]</u>
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Final Ruling: No appearance at the May 31, 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 May 26, 2017, Dckt. 45; 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. 45, 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.

123.	<u>16-23496</u> -E-13 DPC-2	MICHELLE DORENKAMP Matthew DeCaminada	MOTION TO DISMISS CASE 5-3-17 [35]
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Final Ruling: No appearance at the May 31, 2017 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on May 26, 2017, Dckt. 49; 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. 49, 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.

124. [16-21499](#)-E-13 ANGELINA VILLON MOTION TO DISMISS CASE
DPC-1 Mark Wolff 5-3-17 [\[35\]](#)

Final Ruling: No appearance at the May 31, 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 May 3, 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 \$10,299.00 delinquent in plan payments (with another \$4,100.00 coming due before the hearing), which represents multiple months of the \$4,100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on May 17, 2017. Dckt. 39. Debtor, through her attorney, reports that she has tried to meet with her attorney twice to discuss the Motion, but she was called away to work both times.

Debtor's attorney believes that Debtor's plan can be modified, with payments reduced by approximately \$800.00 per month while still providing a 100% dividend to general unsecured claims.

RULING

Unfortunately for Debtor, a modified plan has not been submitted and set for hearing. The delinquency remains. 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.

125. [17-20199-E-13](#) **DENNIS BACLAGAN**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-20-17 [[40](#)]**

DEBTOR DISMISSED: 04/04/2017

Final Ruling: No appearance at the May 31, 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 March 22, 2017. The court computes that 70 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay \$77.00 due on March 13, 2017.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on April 4, 2017 (Dckt. 46), 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.