

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Notice

**The court has reorganized the cases, placing all of the Final Rulings
in the second part of these Posted Rulings,
with the Final Rulings beginning with Item 22.**

**The court has also reorganized the items for which the tentative rulings
are issued, Items 1–21, attempting to first address the items in
which short argument is anticipated.**

July 11, 2018, at 10:00 a.m.

1.	<u>18-22301</u> -E-13 DPC-2	KATISHA BROWN Candace Brooks	MOTION TO DISMISS CASE 6-11-18 <u>24</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 June 11, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Katisha Brown (“Debtor”) did not commence making plan payments and is \$368.00 delinquent in plan payments, which represents one month of the \$368.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR’S RESPONSE

Debtor filed a Response on June 26, 2018. Dckt. 29. Debtor provides credible testimony in her Declaration (Dckt. 30) of events that would cause the default but that can be addressed. Debtor promises to cure the delinquency before the hearing date. Debtor states that she was sick and away from work recently, which resulted in her not being paid.

RULING

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

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

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

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

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

2.

[18-22133](#)-E-13
DPC-2

DONAVAN HAN
Ryan Keenan

MOTION TO DISMISS CASE
6-27-18 [\[25\]](#)

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

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 June 27, 2018. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Donovan Han ("Debtor") is \$960.00 delinquent in plan payments, which represents multiple months of the \$530.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

3. 14-24643-E-13 **LAQUETA MARTIN** **MOTION TO DISMISS CASE**
 DPC-12 **Susan Dodds** **6-5-18 [164]**

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 June 5, 2018. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that LaQueta Martin (“Debtor”) is \$304.00 delinquent in plan payments, which represents multiple months of the \$152.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S REPLY

Debtor’s counsel filed a Reply on June 12, 2018. Dckt. 168. Debtor promises to cure the delinquency before the hearing date. Debtor fails to provide a declaration explaining the reason for the default or how such financial failures are not likely to continue in this case.

RULING

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

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

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

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

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

4. [16-23259](#)-E-13 **CHRISTOPHER/LORA CLARK** **MOTION TO DISMISS CASE**
DPC-4 **Robert Fong** **6-7-18 [69]**

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 June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Christopher Clark and Lora Clark (“Debtor”) are \$2,270.00 delinquent in plan payments, which represents multiple months of the \$730.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on June 26, 2018. Dckt. 73. Debtor asserts "hope" that the delinquency will be cured by the hearing. Debtor does not provide any testimony as to the reason for the default or how Debtor intends cure such a substantial default.

RULING

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

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

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

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

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

5.	<u>17-23560</u> -E-13 DPC-4	NICOLE MOSBY Peter Macaluso	MOTION TO DISMISS CASE 6-6-18 <u>75</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 June 6, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Nicole Mosby (“Debtor”) is \$5,629.44 delinquent in plan payments, which represents multiple months of the \$2,289.92 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on June 27, 2018. Dckt. 79. Debtor promises to file a modified plan before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reason for the default or how such financial failures are not likely to continue in this case.

RULING

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

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

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

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

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

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 June 13, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is XXXXXXXXXXXXXXXXXX.

David Cusick (“the Chapter 13 Trustee”) argues that Barbara Graves (“Debtor”) is in material default under the Plan because Debtor has failed to turn over tax refunds from 2014 to 2016 totaling \$8,015.00. Section five of the Order Confirming the Plan makes that failure a breach of the Plan. Failure to provide those funds puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR’S RESPONSE

Debtor filed a Response on June 27, 2018. Dckt. 51. Debtor states that she completed her missing tax returns within one month of filing this case and has not received any tax returns to turn over to the Chapter 13 Trustee.

RULING

Unfortunately for Debtor, there appears to be cause to dismiss this case. Presuming Debtor filed the missing tax returns by August 28, 2017 (one month after filing this case), ten months have now passed, with Debtor showing little concern for the \$8,015.00 that is due and owing.

With respect to these tax returns, and the \$8,015.00 that is owed to Debtor and to be paid into the Plan, Debtor states that the tax preparer she has chosen to use has an office that is only open on Thursdays. Declaration ¶ 6, 2018. Debtor does not identify this one-day-a-week tax preparer.

Further, Debtor’s testimony does not disclose any follow up by the tax preparer on his or her part.

The Motion to Dismiss was served on Debtor June 13, 2018. Debtor's Declaration, filed on June 27, 2018, two weeks later, is devoid of any action taken by Debtor or Debtor's counsel to track down the missing \$8,015.00. There are no phone calls to the Internal Revenue Service; there are no letters to the Internal Revenue Service. Debtor only testifies that she will try to get to the one-day-a-week tax preparer. No reference is made to any action being taken by her attorney in this case.

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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

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

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

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

7. **14-28968-E-13 KATHERINE PONGRATZ MOTION TO DISMISS CASE**
DPC-3 Eric Schwab 6-6-18 [74]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 6, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Katherine Pongratz ("Debtor") is \$4,556.00 delinquent in plan payments, which represents multiple months of the

\$2,195.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor's attorney filed a Response on June 18, 2018. Dckt. 78. Debtor promises to file a modified plan before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reason for the default or how such financial failures are not likely to continue in this case.

RULING

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on June 21, 2018. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

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

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2015 and 2017 tax years have not been filed still. Filing of the returns is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

The Chapter 13 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 Chapter 13 Trustee notes that Debtor has proposed a plan with a 0.00% dividend, even though there appears to be at least \$104,583.00 in non-exempt equity in this case. The Chapter 13 Trustee has not alleged so specifically, but such result would violate the liquidation analysis and would indicate that Debtor is not prosecuting this case in good faith.

The Chapter 13 Trustee reports that Debtor failed to disclose on the petition prior bankruptcy case no. 18-20835. Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, Dckt. 1. Debtor reported four older cases, but did not disclose the other case that had been filed this year. Debtor's "pattern of filing and dismissal . . . combined with the [Debtor's] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor's] creditors have been wrongly hindered or delayed from enforcing their rights." *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor's bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

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

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

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

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

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

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 June 6, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Josephine Williams (“Debtor”) is \$3,315.69 delinquent in plan payments, which represents multiple months of the \$1,716.86 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S REPLY

Debtor filed a Reply on June 27, 2018. Dckt. 28. Debtor promises to cure the delinquency before the hearing date. Debtor asserts that she had unexpected funeral costs after the death of her daughter and that she has not been reimbursed by her relatives yet. Debtor’s Declaration (Dckt. 29) provides credible testimony of unexpected real life events that could cause the default and for which the Bankruptcy Code provides alternatives to address such a default.

RULING

At the hearing, XXXXXXXXXXXXXXXXXXXXXX.

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

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

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

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

10.	<u>18-20473</u> -E-13 DPC-1	PATRICIA DI GRAZIA Pro Se	CONTINUED MOTION TO DISMISS CASE 3-29-18 <u>28</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—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, 2018. By the court’s calculation, 62 days’ notice was provided. 28 days’ notice is required.

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

David Cusick (“the Chapter 13 Trustee”) argues that Patricia Di Grazia (“Debtor”) did not commence making plan payments and is \$1,394.16 delinquent in plan payments, which represents multiple months of the \$697.08 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Chapter 13 Trustee argues that the Plan is based upon a plan form that is no longer effective now that the court has adopted a new plan form as of December 1, 2017. The Plan is based on a prior plan form, which is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03.

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

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The Chapter 13 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).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 16, 2018. Dckt. 36. The Opposition is two pages long, but the bottom of the two pages are numbered "1" and "3." Reading the Opposition, clearly there are several paragraphs missing from the unfiled page 2.

Page 3's first full paragraph is number "5" which argues that Debtor has prepared a motion to confirm that will be filed. Paragraph 6 argues that Debtor has attached the missing credit counseling certificate as an exhibit. *See* Exhibit F, Dckt. 35.

Also on May 16, 2018, Debtor filed a Declaration Requesting Entry of Order Confirming Chapter 13 Plan Without Chapter 13 Trustee's Approval of Form of Order. Dckt. 35. The court is unsure what such a document is, but it appears to be Debtor's attempt at filing a motion to confirm the plan in this case.

The Declaration contains stock legal conclusions that are unsupported by any evidence and appear to be copy-and-pasted by Debtor without any consideration of the statements' impact. At the end of the Declaration, there are six exhibits, the ones at least partially referenced in the Opposition.

Exhibit A appears to be two print-outs from Golden1 Credit Union for two checks, one in the amount of \$1,394.16 and the other in the amount of \$697.08. The Chapter 13 Trustee is listed as the payee for each check.

Exhibit B is a plan submitted on the court's current plan form. Nothing is attached to Exhibit C because the pages appear to be out of order. Exhibit D is a letter detailing retirement benefits received by Roland Di Grazia and a Residential Lease Agreement. Exhibit E is a profit and loss statement for Roland Di Grazia. Finally, Exhibit F is a Certificate of Debtor Education for Debtor.

MAY 30, 2018 HEARING

At the hearing, Debtor acknowledged the shortcomings in this case and the need for legal counsel. Dckt. 37. The court continued the hearing to 10:00 a.m. on July 11, 2018, to allow Debtor time to obtain counsel. Dckt. 38.

RULING

Although Debtor appears to be trying to address the grounds raised by the Chapter 13 Trustee, there are outstanding problems in this case still. There is no evidence that Debtor has provided her tax returns or pay advices. Debtor has not served the Plan on all creditors. Debtor has not filed a motion to confirm the plan and has not set that motion for a confirmation hearing.

Looking at the Plan form attached as an exhibit to the declaration, the court notes that it is deficient in several ways:

- A. Monthly Plan Payment is \$697.06 for sixty months.
- B. Class 1 Claim of "Fay Servicing" consists of:
 - 1. Regular Monthly Post-Petition Installment of \$697.08, and
 - 2. Cure Payment for \$41,824.96 Arrearage over sixty months of \$697.08.
- C. The Class 2, 3, 4, 5, 6, and 7 (general unsecured) portions of the Plan form are left blank.

Dckt. 35 at 6–11.

Schedule I lists Debtor and non-debtor spouse having monthly income of \$5,535.00. Dckt. 24 at 20–21. No provision is made for the payment of income or self employment taxes on Schedule I. No statement of business gross income and expenses is provided with Schedule I showing how Debtor computes \$3,000 in net monthly business income.

Schedule J lists Debtor having \$4,512.99 in monthly expenses, which includes \$3,146.88 payment for mortgage (and presumably insurance and taxes). *Id.* at 22. On Schedule J, Debtor also states:

- A. Home Maintenance Expenses of\$0.00
- B. Water, Sewer, Garbage Expenses of.....\$0.00

- C. Phone, Internet, Cable Expenses of.....\$0.00
- D. Transportation Expenses of.....\$0.00
- E. Entertainment Expenses of.....\$0.00
- F. Tax Expenses of\$0.00

Id. at 22–23.

The Statement of Financial Affairs is not completed, with no income information provided in Sections 4 and 5. *Id.* at 27. Debtor affirmatively states under penalty of perjury that she had no income in calendar years 2018, 2017, and 2016.

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 29, 2017. By the court's calculation, 84 days' notice was provided. 28 days' notice is required.

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

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

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

The Chapter 13 Trustee's Motion argues that Debtor did not file a Motion to Confirm for an Amended Plan that had been filed. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

The Chapter 13 Trustee argues that Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, specifically for 2016. *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 Chapter 13 Trustee reports that Debtor failed to disclose on the petition the following four prior bankruptcy cases:

- A. Case No. 11-30525
- B. Case No. 14-27048
- C. Case No. 15-20897
- D. Case No. 15-24979

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition. Debtor has since amended the petition to list the four cases. Dckt. 62 at 9.

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on January 3, 2018. Dckt. 63. Debtor promises to file an amended plan before the hearing date and to provide the Chapter 13 Trustee with her 2016 tax return. Debtor's counsel also reports that the petition has been amended to address the missing cases.

Debtor fails (or refuses) to provide her declaration or other testimony under penalty of perjury in opposition to this Motion to Dismiss.

The court is confident that if any evidence existed as to Debtor's current finances, ability to perform a plan, or opposition to the present Motion to Dismiss, it would have been presented. The court has "reminded" Debtor's counsel on multiple occasions that it is necessary to provide evidence with oppositions to motions. Further, where a financial default has occurred, the debtor needs to provide testimony as to not only his or her current financial circumstances, but also what caused the defaults, why they are not likely to occur, and if the debtor is going to cure several months of defaults in one month, how the debtor could have money to do that.

CHAPTER 13 TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on February 8, 2018. Dckt. 96. He states that this Motion to Dismiss has not been resolved by the filing of the Amended Plan. The Chapter 13 Trustee states that he is opposing confirmation and that Debtor does not appear to be making a legitimate attempt to confirm a plan in this case.

FEBRUARY 21, 2018 HEARING

At the hearing, Debtor's counsel addressed the lack of Debtor having to pay any state or federal taxes on her annual income as being based, after his due diligence investigation and good faith statement of applicable law. He also addressed how the response was lacking in explanation for how a professionally licensed real estate agent, the Debtor, would in good faith state under penalty of perjury that she had no obligation to pay state and federal taxes. Dckt. 107.

Even after this exchange, Debtor has failed (or refused) to provide any testimony in opposition to this Motion to Dismiss.

The court continued the hearing to 10:00 a.m. on May 30, 2018. Dckt. 113.

MAY 30, 2018 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 26, 2018. Dckt. 154. This was done to afford Debtor and her counsel the benefit of the doubt with respect to a Motion to Confirm a proposed plan.

JUNE 26, 2018 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on July 11, 2018. Dckt. 159. This continued the hearing to a regular dismissal calendar, following the court denying the Motion to Confirm the Chapter 13 Plan. Civil Minutes, Dckt. 158.

RULING

As the Chapter 13 Trustee has noted, Debtor has had four prior recent bankruptcy cases. Three of these were with the assistance of counsel, and only one in *pro se*. In dismissing the most recent prior case (in which Debtor was represented by counsel), the court found:

“The Trustee argues that the Debtor did not commence making plan payments and is \$5,608.00 delinquent in plan payments, which represents multiple months of the \$2,804.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case for failure to commence plan payments. The motion is granted and the case is dismissed.”

15-24979; Civil Minutes, Dckt. 44.

In dismissing the case before that, filed in *pro se*, the court’s findings include:

“The Chapter 13 Trustee seeks dismissal of Debtor’s case on the basis that Debtor is causing unreasonable delay prejudicial to creditors. 11 U.S.C. § 1307(c).

1. Debtor is \$5,292 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,646 is due on May 25, 2015. Debtor has paid \$0 into the plan to date.

2. Trustee’s objection to confirmation was heard and sustained on April 21, 2015. Debtor has not filed a subsequent amended plan or motion to confirm plan.

On June 9, 2015, Debtor filed her own motion to dismiss the Chapter 13 case. Dckt. 33. The Motion does not state any reason Debtor say wants to dismiss the case. . .

. . .

Cause exists to dismiss this case. The motion is granted and the case is dismissed.”

15-20897; Civil Minutes, Dckt. 34.

The case before that, 14-27048, the case was dismissed due to Debtor's failure/inability to confirm a Chapter 13 Plan, notwithstanding the assistance of counsel. 14-27048; Order, Dckt. 35.

Debtor filed her Second Amended Plan on January 10, 2018. Dckt. 69. January 2010 is the seventh month of this Chapter 13 case. For the first five months of this case, Debtor is to fund the Plan with the aggregate sum of \$4,400.00, and then months six through sixty of the Plan fund it with \$2,040 per month. Plan ¶ 2.01, Dckt. 69. For the Class 1 Claim treatment, Debtor will be making a monthly payment of \$517.00 for the \$28,405.77 post-petition arrearage on the Wells Fargo Bank, N.A. secured claim. For the \$256,806.77 pre-petition arrearage, Debtor will make a \$930.00 "adequate protection payment" while diligently prosecuting a loan modification. Plan Additional Provisions ¶¶ 6.05-6.07, *Id.* These Plan Additional Provisions also disclose that the regular contractual monthly payment for this debt is \$5,681.04. These Additional Provisions include the "standard" Ensminger Loan Modification terms.

On Schedule I, Debtor states under penalty of perjury that she is employed in real estate, having been so employed for twenty-one years. Dckt. 27 at 1. Debtor states her gross monthly income is \$6,000, from which there is no withholding for income taxes, Social Security, or other standard employee withholdings. *Id.* In the note at the bottom of Schedule I as to whether Debtor anticipates an increase in income, Debtor states under penalty of perjury that she anticipates her income increasing because:

"Alta Realty Group Ca Change: The Housing Market Is Picking Up Again, After The Crash."

Id. It appears that in Debtor's real estate world the real estate "crash" has extended through 2017 and is only starting to improve in August 2017. That is inconsistent with every other case that has been presented to this court over the past four years, during which time the California real estate market has roared back.

On her Amended and Supplemental Schedule J (Debtor having checked the boxes for the filing somehow being both amended and supplemental), Debtor states having monthly expenses of \$3,500.00. Dckt. 121 at 5. Debtor reduces her monthly mortgage expense for her residence from being only \$1,717.00 to \$0.00. *Id.* While listing her forty-five-year old son as a dependent, she states having a monthly food and housekeeping supply expense of \$600.00 per month. *Id.* This is not credible, appearing to be highly unreasonable for two adults.

There is a missing expense that indicates that Debtor's finances are not as stated. No provision is made for Debtor to pay:

- A. Any Federal Income Tax
- B. Any State of California Income Tax
- C. Any Social Security Tax
- D. Any Self-Employment Tax
- E. Any Unemployment Tax

Debtor, with a purported income of \$72,000 per year, Debtor fails to provide any basis for being exempt from the state and federal taxes that burden every other working person.

Beginning in January 2018, Debtor is required to pay all of her projected disposable income, to fund the Plan, with Debtor only making an adequate protection payment to Wells Fargo Bank, N.A. If Debtor has to pay \$1.00 of federal or state taxes, by Debtor's own statement of finances, she will default in the plan payments. It appears that Debtor's state and federal taxes will be well in excess of \$1.00 in light of her having at least \$72,000 per year in gross income.

On February 14, 2018, Debtor and her counsel filed Amended Schedule I. Dckt. 99. Debtor increases her income to \$6,170.00 per month. While reducing her income from her real estate business to \$4,560 per month, she now discloses receiving \$1,610.00 per month in Social Security Income. *Id.* at 5. In her business income and expense attachment, she lowers her monthly gross income to \$5,000, and has (\$440) in expenses. *Id.* at 6.

Debtor no longer skips listing expenses for taxes, now showing a monthly expense of \$150.00 for income taxes. Dckt. 121 at 5.

Chapter 13 Trustee's Opposition to Motion to Confirm, Dckt. 93.

The Chapter 13 Trustee's Opposition includes the lack of Debtor disclosing her personal property assets on Schedule A/B. The Chapter 13 Trustee also notes Debtor excluding any expense for state and federal taxes relating to her \$72,000 per year income.

HSBC Bank, N.A., Trustee for the Wells Fargo Bank, N.A. claim, also filed an opposition. The Opposition restates there being a \$256,806.77 pre-petition arrearage. While HSBC Bank, N.A. chaffs at the adequate protection provisions of the proposed plan (ignoring that it holds the key to such terms by filing a motion for relief from the stay, and such relief not being contingent on the loan modification process being completed), it asserts that Debtor is unable to make the plan payments.

Proofs of Claims. The Wells Fargo Bank, N.A. claim for which there is a \$256,806.77 pre-petition arrearage, is stated to be a claim totaling \$956,617.00. Proof of Claim No. 5. From the Attachments to Proof of Claim No. 5, it appears that the defaults in payments go back to 2009.

The Internal Revenue Service has filed its proof of claim for \$15,901.53 in priority taxes and \$7,053.60 general unsecured claim. Amended Proof of Claim No. 7. The Attachment to Proof of Claim No. 7 discloses that the taxes are for 2013, 2014, and 2016 tax years. Further, the opposition asserts that Debtor has not filed a tax return for 2016. This claim demonstrates that Debtor does have federal and state tax expenses from her income, even at the lower-earning rates in prior years than now stated under penalty of perjury going forward.

Schedules, Assets, and Claims. On Amended Schedule A/B, Debtor lists owning the real property identified as 7824 English Hills Road, Vacaville, California. Debtor states the Property has a value of \$550,000.00. Dckt. 108.

Debtor then lists the 7824 English Hills Road two more times on the Schedules, one time stating it has a value of \$56,191.68 and then \$0.00. Dckt. 1 at 8–9. For personal property, Debtor has corrected her omissions to state under penalty of perjury that she has:

- A. One vehicle (a Toyota Land Cruiser),
- B. \$2,500.00 of furniture,
- C. \$2,000.00 of electronics,
- D. \$500.00 of pictures and books,
- E. \$350.00 for an antique poodle collection,
- F. \$80.00 of exercise equipment,
- G. \$250.00 of clothing,
- H. \$800.00 of jewelry,
- I. \$20.00 of cash on hand, and
- J. \$1,000.00 in a Wells Fargo checking account.

Amended Schedule A/B, Dckt. 108.

After the February 21, 2018 hearing, the court reviewed the schedules again and concluded that Debtor may have \$1,610.00 per month to pay taxes and fund plan payments of \$2,040.00. The court noted that two motions to value have been granted in this case, and any dismissal of the case would result in those motions having to be relitigated in any future case.

Debtor's counsel has affirmatively prosecuted the case and plan, built around Debtor not having to pay any state or federal taxes. These acts have all been subject to counsel's certifications under Federal Rule of Bankruptcy Procedure 9011.

The court has denied confirmation of the pending plan, and there is cause to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

12. [16-22877-E-13](#) **PATRICIA WHITE** **MOTION TO DISMISS CASE**
DPC-2 **Marc Caraska** **6-6-18 [33]**

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 June 6, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Patricia White (“Debtor”) is \$1,263.00 delinquent in plan payments, which represents multiple months of the \$421.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor’s counsel filed two copies of the same Opposition on June 25, 2018. Dckt. 37, 39. Debtor promises to cure the delinquency with a series of payments throughout June and July 2018 from new employment. Her attorney argues that the delinquency was caused by Debtor’s unemployment. Debtor has failed, or refused, to file a declaration providing testimony as to the “facts” argued by counsel.

RULING

The court notes that Debtor filed her own opposition to the Motion. Debtor is represented by counsel of record Marc Caraska, and her counsel must be the person to submit pleadings. Debtor signed the Opposition 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).

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

The default asserted by the Chapter 13 Trustee is \$1,263.00, which represents three months of the required plan payments. Motion, Dckt. 33; Declaration, Dckt. 35. Debtor's counsel argues that Debtor defaulted due to being unemployed. That appears to equate to Debtor having lost the income source upon which the current Plan is premised.

No new employment information is provided by Debtor and her attorney. In the Opposition, Debtor appears to admit that her new income source allows her to make twice the amount as required under the confirmed plan in this case (making two payments in June and two payments in July).

Contrary to Debtor's request that the court summarily dismiss the present Motion, Debtor's unexplained new income source and ability to make payments of at least twice the amount stated in the current plan warrant dismissal of the case.

The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2018. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Lisa Ravazzolo ("Debtor") is \$920.00 delinquent in plan payments, which represents multiple months of the \$390.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on June 26, 2018. Dckt. 64. Debtor's counsel argues that Debtor promises to cure the delinquency before the hearing date. Debtor fails (or refuses) to provide a declaration explaining the reason for the default or how such financial failures are not likely to continue in this case.

Though Debtor is now more than four years into this case, she has defaulted and offers no explanation. No explanation is provided for why the default occurred. No explanation is provided as to how she will not default in the future.

Even more significantly, Debtor offers no testimony (nor does her counsel even attempt to argue) how Debtor will be able to cure three monthly payments in default and make the current monthly payment in one month. Debtor has previously provided the court with testimony and financial information under penalty of perjury that she has only \$390.00 per month in disposable income to fund the Plan. Declaration, Dckt. 34; Amended Schedules I and J, Dckt. 37.

Given Debtor providing no new testimony of changes in her finances and Debtor's prior statements as to her finances in the above Declaration and Amended Schedules I and J, the argued cure is a financial impossibility. The alternative would be that Debtor has secretly had more disposable income, has with the assistance of her counsel misrepresented her finances, and has committed a fraud on this court with her current plan.

The court is confident that if any evidence existed as to Debtor's current finances, it would have been presented. The court has "reminded" Debtor's counsel on multiple occasions that it is necessary to provide evidence with oppositions to motions. Further, when a financial default has occurred, the debtor needs to provide testimony as to not only his or her current financial circumstances, but also what caused the defaults, why they are not likely to occur, and if the debtor is going to cure several months of defaults in one month, how the debtor could have money to do that.

Debtor's failure (or refusal) to provide such testimony speaks volumes, all but concurring in the Motion to Dismiss.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Further, Debtor offers no evidence in opposition, no testimony in opposition, and no testimony as to how the default occurred and how it can be cured.

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

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

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

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

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

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 June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) alleges that Anthony Gianola and Wendy Gianola (“Debtor”) have not filed tax returns for the four years preceding the petition date. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on April 24, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on June 26, 2018. Dckt. 38. Debtor promises to file an amended plan and the missing tax returns before the hearing date.

Debtor fails (or refuses) to provide a declaration explaining the delay or why now, in July 2018, Debtor will now be able to prepare and file four years of delinquent tax returns.

The court is confident that if any evidence existed as to Debtor’s current finances or ability to perform a plan, it would have been presented. The court has “reminded” Debtor’s counsel on multiple occasions that it is necessary to provide evidence with oppositions to motions. Further, when a financial default has occurred, the debtor needs to provide testimony as to not only his or her current financial

circumstances, but also what caused the defaults, why they are not likely to occur, and if the debtor is going to cure several months of defaults in one month, how the debtor could have money to do that.

Debtor's failure (or refusal) to provide such testimony speaks volumes, all but concurring in the Motion to Dismiss.

RULING

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

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

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

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

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

15.	<u>14-22187-E-13</u> DPC-2	NEDA HALL Kyle Schumacher	MOTION TO DISMISS CASE 6-6-18 <u>55</u>
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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 June 6, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Neda Hall (“Debtor”) is \$586.00 delinquent in plan payments, which represents multiple months of the \$276.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on June 6, 2018. Dckt. 59. Debtor states that she can cure the delinquency before the hearing date. In her Declaration, Debtor testifies her factual conclusions that she “will be able to bring my payments current pursuant to the terms contained within the motion to dismiss.” Declaration ¶ 2, Dckt. 60. Other than saying that three past due payments and the then current July 2018 payment will be made, Debtor fails (or refuses) to provide any testimony as to why the default occurred or how Debtor could have four months of plan payment of disposable income in one month.

RULING

Fortunately for Debtor, the Chapter 13 Trustee has filed a request to dismiss this motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014. This is based on Debtor having scheduled a payment of \$862.00 through TFS for July 2, 2018. That would appear to cure the payments through June 2018.

Possibly the Chapter 13 Trustee is aware of information that Debtor and her counsel have withheld from the court. Possibly the Chapter 13 Trustee is merely assuming because a Debtor can cure a payment, such cure without explanation as to the source of four monthly payment amounts in one month is irrelevant to Debtor’s good faith.

With respect to the request to dismiss the Motion to Dismiss, at the hearing the Chapter 13 Trustee stated, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX** that resolves the Motion.

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

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

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

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

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 20, 2018. 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: \$77.00 due on May 14, 2018.

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

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 20, 2018. 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 June 12, 2018.

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

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

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

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

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

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

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

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 June 11, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Robert Mac Bride ("Debtor") did not commence making plan payments and is \$3,073.00 delinquent in plan payments, which represents one month of the \$3,073.00 plan payment. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the court's files discloses that the present Chapter 13 case is not Debtor's only recent bankruptcy case. In Chapter 7 case no. 17-22283 filed on April 5, 2017, Debtor received his discharge on February 21 2018. Case No. 17-22283 was originally filed as a Chapter 13 case. That case was converted to one under Chapter 7 on Debtor's oral motion in open court on November 14, 2017. 17-22283; Civil Minutes, Dckt. 88.

Prior to that, Debtor filed Chapter 13 case No. 16-24396 on July 6, 2016, which was dismissed on April 3, 2017. The court's bases for dismissing case No. 16-24396 are stated in the Civil Minutes for the hearing on that Chapter 13 Trustee's Motion to Dismiss that prior case.

Debtor's Chapter 13 Plan filed in this case requires \$3,073.00 in monthly plan payments for sixty months. Dckt. 13. Under the terms of the Plan, the following payments are to be made:

A. Class 1
Home Mortgage Creditor Deutsche Bank

1. Post-Petition Current Payment.....\$1,846.65
2. Pre-Petition Arrearage Payment.....\$ 609.00

B. Class 2 Secured Claims

1. Sacramento County Utilities.....\$ 25.00

On Schedule I, Debtor lists monthly take home income of \$5,361.50 (including a “benefit” in the amount of \$150 “by eating at my fiancée’s house). Dckt. 12 at 29. On Schedule J, Debtor lists having only \$900 per month in expenses. *Id.* at 30–32. To get to \$900 per month in expenses, some of the questionable expenses include: \$0.00 for dental and medical expenses, \$10 for clothing and laundry, \$57 for transportation (for Debtor’s two vehicles, a 1984 Toyota Landcruiser and 1982 Toyota Landcruiser), and \$15 for entertainment per month for sixty months.

Cause exists to dismiss this case arising from the default in payment and failure to provide evidence of income. Additionally, it appears Debtor may be overly optimistic as to what constitutes reasonable expenses. The Motion is granted, and the case is dismissed.

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Maurice Burnett (“Debtor”) is \$7,014.05 delinquent in plan payments, which represents multiple months of the \$6,602.81 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 27, 2018. Dckt. 43. Debtor promises to cure the delinquency in two payments by July 3, 2018. In his Declaration, Debtor testifies that he fell behind in payments because one of his customers cancelled a credit card payment for services rendered.

RULING

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

Additionally, the default is asserted, when the Motion was filed on June 7, 2018, to be \$7,014.05—which was slightly more than one month’s plan payment of \$6,602.81. In his Declaration, Debtor says that he has partially cured the default and will have all payments cured by the hearing. No explanation is provided as to how he will be able to double up plan payments.

Though Debtor does not explain how he could cure such a substantial default, in light of his income and expenses, and that it only being one month in default, it appears that with some “belt tightening” Debtor could reasonably cure the default.

However, there is not evidence of or confirmation from the Chapter 13 Trustee that the default has been cured.

The Motion is granted, and the case is dismissed.

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

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

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

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

20. [18-23766](#)-E-13 **PAULETTE HACKER**
Pro Se

STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-15-18 [1]

**Appearance of Paulette Hacker, Chapter 13 Debtor,
Required at the Hearing**

No Telephonic Appearance Permitted

Debtor's Atty: Pro Se

The Status Conference is XXXXXXXXXXXXXXXXXXXXXX.

Notes:

Set by order of the court dated 6/29/18 [Dckt 18]. Debtor to appear in person, no telephonic appearance.

JULY 11, 2018 STATUS CONFERENCE

Paulette LaVerne Hacker ("Debtor") commenced this voluntary Chapter 13 case on June 15, 2018. This is not her first recent case, with two prior cases being:

Chapter 13 Case 18-21774

Filed.....March 27, 2018

Dismissed.....April 16, 2018

Basis of Dismissal: Failure to file Chapter 13 Plan, Schedules, Statement of Financial Affairs

Chapter 7 Case

Filed.....February 7, 2018

Dismissed.....April 30, 2018

Basis of Dismissal: Debtor's failure to attend First Meeting of Creditors

In the current case, Debtor has requested, and the court has granted, an extension of time to file her Chapter 13 Plan, Schedules, and Statement of Financial Affairs. Notice of Incomplete Filing, Dckt. 3.

In Debtor's declaration provided with the Motion to Extend Time, her testimony as to the reason for such additional time is summarized as follows:

- A. Debtor had to refile her Chapter 13 bankruptcy because she did not realize that she could have requested an extension of time.

- B. Debtor states that she did not have the funds to pay the filing fee.
- C. Debtor filed this bankruptcy case on June 15.
- D. On (presumably June) 19, Ditech and The Mortgage Law Firm sold her home at auction.
- E. Debtor disputes their right to foreclose, asserting that they committed fraud in obtaining and filing a deed of trust against that property.
- F. A man showed up at the property (Debtor's home) on (presumably June) 20 "demanding I have 3 days to leave."
- G. Debtor asserts that she first has to deal with this purported foreclosure, stating, "as they are stealing my asset."

Dckt. 12.

Debtor has prosecuted all three of these bankruptcy cases in *pro se*, without the apparent assistance of an attorney. In her Chapter 7 case, Debtor did file a Schedule I, in which she states receiving gross income of \$2,333.00 per month for alimony, spousal support, and child support. 18-20662, Dckt. 18 at 9. Debtor notes that the support payments ceased February 28, 2018, but that "I am confident I can find a job." The court has no further financial information from Debtor.

Potential Loss of Rights

This is Debtor's third bankruptcy case filed in the past twelve months. What Debtor may not realize is that Congress provides in 11 U.S.C. § 362(c)(4) that when there have been two or more prior bankruptcy cases filed within the prior year to the current case, the automatic stay does not go into effect in the current case. The debtor must request that the court impose the stay in the current case. The provisions of 11 U.S.C. § 362(c)(4) are:

- (4)(A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and **if 2 or more** single or joint cases of the debtor **were pending within the previous year but were dismissed**, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), **the stay under subsection (a) shall not go into effect upon the filing of the later case**; and
 - (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;
- (B) **if, within 30 days after the filing of the later case**, a party in interest requests **the court may order the stay to take effect** in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and

a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)–

(i) as to all creditors if–

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

By application of 11 U.S.C. § 362(c)(4), it appears that Debtor may not have one of the key debtor rights in play—the automatic stay. The case having been filed on June 15, 2018, the thirty-day deadline for filing a motion to impose the stay is quickly expiring.

Prosecution of Chapter 13 Case

Upon reviewing the documents in this case, it appears that Debtor's fight is not "reorganization," but litigation against the persons asserting the right to foreclose. Such litigation and use of an automatic

stay can be part of a Chapter 13 Plan, but it is necessary for Debtor to prosecute such a plan. Merely wanting to be in bankruptcy and “dispute” that a creditor is owed money, paying nothing into a plan until the litigation is completed is not a Chapter 13 Plan. *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), *aff’d*, *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

21.	<u>17-24484</u> -E-13 BB-2	MELISSA CHAMBERS Bonnie Baker	MOTION FOR ORDER FOR PARTIAL RELEASE OF COMMUNITY PROPERTY FUNDS 6-25-18 [69]
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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 Chapter 13 Trustee and Office of the United States Trustee on June 25, 2018. By the court’s calculation, 16 days’ notice was provided. The court set the emergency hearing for 10:00 a.m. on July 11, 2018. Dckt. 77.

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

On June 25, 2018, Melissa Chambers (“Debtor”) filed an *ex parte* motion for the court to enter an order authorizing disbursement of \$3,000.00 pursuant to an order in state court relating to a property division.

David Cusick (“the Chapter 13 Trustee”) filed a Response on June 26, 2018, indicating that he had not given consent to the Motion, despite what is presented in Bonnie Baker’s Declaration. Dckt. 73.

Debtor’s Counsel filed a Reply on June 27, 2018, stating that the reference to consent being made by the Chapter 13 Trustee was an error that should have been omitted from the Motion. Dckt. 75.

COURT’S INTERIM ORDER

On June 29, 2018, the court entered an Interim Order in this matter. Dckt. 77. The court reviewed the income and expenses listed in this case on Schedules I & J and noted that Debtor’s \$200.00 monthly net income would be erased if the \$300.00 monthly support payment was not being made now as Debtor alleges. Additionally, the court noted that Debtor has not provided for Medicare, or any other health expense, on Schedule J.

The court questioned Debtor’s strategy of filing an emergency motion for relief instead of requesting a hearing as soon as possible, and instead of outright granting the Motion, the court entered an Interim Order authorizing Debtor on an interim basis to use the \$3,000.00 distribution from community property assets as provided in the Order of the Superior Court, County of Shasta, Case No. 176573, if such order was issued by the state court.

The court set an Initial Hearing on the Motion for 10:00 a.m. on July 11, 2018, and ordered Debtor to file supplemental pleadings on or before July 5, 2018, including a copy of the signed and filed Superior Court Order authorizing the \$3,000.00 distribution.

DEBTOR’S SUPPLEMENTAL PLEADING

No Supplemental Pleadings were filed by Debtor.

JULY 11, 2018 HEARING

At the hearing, **XXXXXXXXXXXXXXXXXXXXX**.

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

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

The Motion for Partial Release of Community Property Funds filed by Melissa Chambers (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **XXXXXXXXXXXXXXXXXXXXX**.

FINAL RULINGS

22. [15-25401](#)-E-13 MICHAEL KYALWAZI MOTION TO DISMISS CASE
DPC-1 Mark Shmorgon 6-6-18 [82]

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 3, 2018, Dckt. 89; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Michael Kyalwazi (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 89, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

- | | | | |
|-----|------------------------------------------------|------------------------------------------------|---------------------------------------------------------------|
| 23. | <u>17-27701</u> -E-13
DPC-3 | EDWARD/MYLINLINNY
STEARNS
Fred Ihejirika | MOTION TO DISMISS CASE
6-11-18 <u>[47]</u> |
|-----|------------------------------------------------|------------------------------------------------|---------------------------------------------------------------|

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

- | | | | |
|-----|---------------------------------------|---------------------------------|-----------------------------------------------------------------------------------|
| 24. | <u>18-22301</u> -E-13 | KATISHA BROWN
Candace Brooks | ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-23-18 <u>18</u> |
|-----|---------------------------------------|---------------------------------|-----------------------------------------------------------------------------------|

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 25, 2018. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on May 18, 2018.

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

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

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

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

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

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

25. [18-20405](#)-E-13 **JUNELLE PALEC** **MOTION TO DISMISS CASE**
DPC-2 **Gary Fraley** **6-5-18 [47]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Junelle Palec ("Debtor") is \$3,705.00 delinquent in plan payments, which represents one month of the \$3,705.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

26. [16-23406-E-13](#) **EMMANUEL/HENNIE CARREON** **MOTION TO DISMISS CASE**
DPC-1 **Mary Ellen Terranella** **6-7-18 [27]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 2, 2018, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Emmanuel Carreon and Hennie Carreon (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2018. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Ozniesha Williams ("Debtor") is \$3,549.09 delinquent in plan payments, which represents less than one month of the \$3,551.03 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 24, 2018.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 11, 2018. Dckt. 27, 31. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 27, 29. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

28. [13-34917-E-13](#) **AARON CATUBIG** **MOTION TO DISMISS CASE**
DPC-2 **Scott Sagaria** **6-11-18 [74]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 11, 2018. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Aaron Catubig (“Debtor”) is \$1,289.00 delinquent in plan payments, which represents multiple months of the \$643.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 15, 2018. Dckt. 78. Debtor’s attorney states that he and Debtor have reviewed and discussed the Chapter 13 Trustee’s Motion to Dismiss based on his delinquency. Debtor has not raised grounds to oppose the Motion, though. Debtor’s attorney states that Debtor has been presented with several options in responding to the Chapter 13 Trustee’s Motion to Dismiss, including modifying the Plan or converting the case to one under Chapter 7. A review of the docket shows that Debtor has not filed a modified plan or a motion to convert the case.

In his Declaration, Debtor states that he will not be able to bring the plan payments current and that he has informed the Chapter 13 Trustee about this fact. Dckt. 79. However, Debtor fails to explain the reason for the default or how such financial failures are not likely to continue in this case. Debtor states that he is currently reviewing his budget and financial situation to decide how to move forward with this

bankruptcy case. Debtor's attorney has informed Debtor that he must make his decision prior to the hearing date.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 5, 2018. Dckt. 81, 84. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 81, 86. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

29. [18-20717](#)-E-13 THOMAS RETZLAFF AND MOTION TO DISMISS CASE
DPC-1 TIFFANY ANDERSON-RETZLAFF 6-6-18 [\[17\]](#)
Seth Hanson

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 6, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Thomas Retzlaff and Tiffany Anderson-Retzlaff (“Debtor”) are \$4,050.00 delinquent in plan payments, which represents multiple months of the \$1,350.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

30. [13-33721](#)-E-13 **MICHAEL/SHAUNIE BRIGGS** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **6-12-18 [68]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 3, 2018, Dckt. 74; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Michael Briggs and Shaunie Briggs (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 74, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

31. [18-20738](#)-E-13 TAUJAI CAREY
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
5-21-18 [\[54\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 23, 2018. The court computes that 49 days' notice has been provided.

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

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

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

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

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

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

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

32. [18-20738](#)-E-13 TAUJAI CAREY
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-18-18 [\[60\]](#)**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 20, 2018. 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 June 12, 2018.

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

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

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

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

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

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

33. [18-21839](#)-E-13 FRANCISCA GARAY
Justin Kuney

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
6-4-18 [\[20\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 6, 2018. The court computes that 35 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 29, 2018.

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

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

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

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

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

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

34. [18-22140](#)-E-13 ESTELLA ACEVEDO
Michael Hayes

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-14-18 [\[39\]](#)**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 16, 2018. The court computes that 25 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 June 11, 2018.

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

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Autumn Hernandez (“Debtor”) is \$1,796.00 delinquent in plan payments, which represents multiple months of the \$599.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 2, 2018, Dckt. 123; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Pauline Abbott (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 123, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

37. [18-20345](#)-E-13 MATTHEW THOMPSON MOTION TO DISMISS CASE
DPC-1 Gabriel Liberman 6-6-18 [\[20\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

38.	<u>18-21247</u> -E-13 DPC-1	CHARLES HERNANDEZ Steele Lanphier	CONTINUED MOTION TO DISMISS CASE 4-25-18 <u>27</u>
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Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 25, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

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

Debtor has failed to timely provide the Chapter 13 Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of bank account statements, and

- D. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(I), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and the Chapter 13 Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

DEBTOR'S OPPOSITION

Debtor filed an Opposition on May 24, 2018. Dckt. 31. Debtor's counsel argues in the Opposition that Debtor promises to file an amended plan before the hearing date. Debtor has chosen (or refuses) to provide a declaration explaining the failure to file the documents and reasons for the delay in prosecuting this case.

MAY 30, 2018 HEARING

At the hearing, new information was provided, and the Chapter 13 Trustee agreed to a continuance. Dckt. 48. The court continued the hearing to 10:00 a.m. on July 11, 2018. Dckt. 49.

FILING OF AMENDED PLAN

Debtor filed an Amended Plan and Motion to Confirm on June 4, 2018. Dckt. 43, 46. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckt. 43, 45. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

39. [17-22651](#)-E-13 **MARIO/CHRISTINE BORREGO** **MOTION TO DISMISS CASE**
DPC-3 **Mark Wolff** **6-7-18 [64]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 5, 2018, Dckt. 71; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Mario Borrego and Christine Borrego (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 71, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 6, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Richard Chairez ("Debtor") is \$2,727.28 delinquent in plan payments, which represents multiple months of the \$1,128.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

41. [15-23258](#)-E-13 **MOSES/PATRICIA MERCADO** **MOTION TO DISMISS CASE**
DPC-4 Paul Bains 6-5-18 [\[87\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

42. [17-27368](#)-E-13 **ROCHELLE WARD** **MOTION TO DISMISS CASE**
DPC-2 Nima Vokshori 6-7-18 [\[45\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Rochelle Ward (“Debtor”) is \$10,800.00 delinquent in plan payments, which represents multiple months of the \$3,600.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 17, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

43.	<u>18-21469</u> -E-13	DONNA WELCH David Foyil	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-18-18 <u>52</u>
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Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 20, 2018. 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: \$77.00 due on May 14, 2018.

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

Donna Welch ("Debtor") filed an Opposition on June 1, 2018. Dckt. 61. Debtor argues that she paid the installment fee on May 29, 2018.

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

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

45. [14-30278-E-13](#) **GARY SHREVES AND KAREN** **MOTION TO DISMISS CASE**
 DPC-7 **BAYSINGER- SHREVES** **6-5-18 [229]**
 Mark Wolff

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2018. 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). Debtor filed opposition. Upon review of the record, the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Gary Shreves and Karen Baysinger-Shreves ("Debtor") are \$1,702.00 delinquent in plan payments, which represents multiple months of the \$851.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on June 21, 2018. Dckt. 233. Debtor states that a modified plan is being prepared to file before the hearing date. Debtor explains that the delinquency was caused by loss of employment, reduced income, and unexpected medical expenses. Debtor provides a Declaration (Dckt. 234) providing testimony under penalty of perjury for the facts argued in the Opposition.

RULING

Debtor has filed a Modified Plan and Motion to Confirm. A summary review of the Motion (Dckt. 236) and declaration (Dckt. 238) in support appear to be consistent (mostly) with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013, and the declaration provides specific

testimony, not merely Debtor's personal findings and conclusions. However, the court notes that the grounds stated with "particularity" for the elements required for confirmation consist of:

"6. Debtors' modified plan meets the requirements set out in 11 U.S.C. §§ 1322(a), 1322(b), 1323(c), and 1325(a) for confirmation of chapter 13 plans."

Motion, Dckt. 236. Merely stating the statutes does not comply with the "particularity" requirement, or even the lesser minimum pleading requirement for a complaint, which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 7(a)(2). The Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Further, a pleading that offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" is insufficient. *Id.*

The court is confident that counsel for Debtor, who appears regularly in this court, will file a Supplement to the Motion in which all of the specific grounds are stated with particularity by August 1, 2018, to avoid the court denying the Motion to Confirm with prejudice due to the failure to comply with Federal Rule of Bankruptcy Procedure 9013.

Debtor having filed a Modified Plan and Motion to Confirm, the deficiencies in the Motion likely to be cured in advance of the hearing on that Motion, the court denies without prejudice the Motion to Dismiss.

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

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

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

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

46. [18-22178](#)-E-13 **BLAIRE KNIGHT**
Muoi Chea

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
6-18-18 [\[32\]](#)

Final Ruling: No appearance at the July 11, 2018 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 20, 2018. 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 June 11, 2018.

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

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 6, 2018. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that Candise Kirkpatrick ("Debtor") is in material default under the Plan because the Plan will exceed sixty months. The Chapter 13 Trustee calculates that the Plan will complete in seventy-six months because of the amount of the filed claims. He notes that Debtor was provided with a Notice of Filed Claims on July 18, 2017, which indicated that a modified plan would be required. 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).

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

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

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

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

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

48. [16-21282](#)-E-13 **RENATO/EVA BERNARDES** **MOTION TO DISMISS CASE**
DPC-3 **Jennifer Lee** **6-7-18 [32]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 3, 2018, Dckt. 37; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Renato Bernardes and Eva Bernardes (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on July 5, 2018, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Sandra Avila (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 7, 2018. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Nikila Durham ("Debtor") is \$2,290.00 delinquent in plan payments, which represents multiple months of the \$1,145.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) argues that Robert Batey (“Debtor”) did not commence making plan payments and is \$600.00 delinquent in plan payments, which represents two months of the \$200.00 plan payment called for the first two months of the plan, followed by fourteen payments of \$500.00 before increasing to \$700.00. Dckt. 8. Before the hearing, another plan payment will be due. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor did not present any opposition to the Motion.

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

The Chapter 13 Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtor’s prior plan on May 22, 2018. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION AND WITHDRAWAL OF OPPOSITION

Debtor filed an Opposition on June 30, 2018. Dckt. 49. Debtor's attorney presents a number of explains for what has gone wrong in this case that has caused such delay and infeasibility of a plan; nevertheless, Debtor presents the information as an opposition.

On July 5, 2018, Debtor's attorney filed a Withdrawal of the Opposition, asserting that this case is "too badly battered to save." Dckt. 52.

RULING

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 6, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Marvin Gardner and Daryl Gardner (“Debtor”) are \$4,092.38 delinquent in plan payments, which represents multiple months of the \$2,046.19 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 7, 2018. By the court’s calculation, 34 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Richard Huettner (“Debtor”) is \$635.00 delinquent in plan payments, which represents multiple months of the \$225.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on June 26, 2018. Dckt. 39. Debtor’s attorney argues that a modified plan has been filed for Debtor to sign and submit to the court. Debtor’s attorney requests until July 17, 2018, to file the proposed modified plan.

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 5, 2018. Dckt. 41, 42. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 41, 45. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor’s personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

54. [16-23496](#)-E-13 **MICHELLE DORENKAMP** **MOTION TO DISMISS CASE**
DPC-4 **Kyle Schumacher** **6-7-18 [86]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

55. [14-30097](#)-E-13 **IRVIN/THERESA WHITE** **MOTION TO DISMISS CASE**
DPC-6 **Thomas Amberg** **6-5-18 [162]**

Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on June 28, 2018, Dckt. 168; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Irvin White and Theresa White (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 168, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56.	<u>16-27697</u> -E-13 DPC-4	BRIAN OKAMOTO Peter Macaluso	MOTION TO DISMISS CASE 6-6-18 [86]
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Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on June 6, 2018. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Brian Okamoto (“Debtor”) is \$3,326.00 delinquent in plan payments, which represents multiple months of the \$2,875.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

FILING OF MODIFIED PLAN

Debtor filed a Modified Plan and Motion to Confirm on July 5, 2018. Dckt. 92, 96. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 92, 94. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds

with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

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

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

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

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

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

57.	<u>16-27099</u> -E-13 DPC-2	JENNIFER BORBA James Pitner	MOTION TO DISMISS CASE 6-7-18 <u>64</u>
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Final Ruling: No appearance at the July 11, 2018 hearing is required.

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

David Cusick ("the Chapter 13 Trustee") having filed an Ex Parte Motion to Dismiss the pending Motion on July 5, 2018, Dckt. 71; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the reply filed by Jennifer Borba ("Debtor"); the Ex Parte Motion is granted, the Chapter 13 Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 71, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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