

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 53.**

**The court has also reorganized the items for which the tentative rulings
are issued, and will call matters past 35 at 11:00a.m.**

September 5, 2018 at 10:00 a.m.

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| 1. | <u>17-25094</u> -E-13
<u>DPC-1</u> | DAVID/DOROTHY JONES
Mary Ellen Terranella | MOTION TO DISMISS CASE
8-8-18 <u>[25]</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 August 8, 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 denied without prejudice.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that David Jones and Dorothy Mae Jones ("Debtors") are \$1,745.00 delinquent in plan payments, which represents multiple months of the \$800.00 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 further that Debtor is in material default under the Confirmed Plan because Debtor is delinquent in payments. Section 1.01 of the Confirmed Plan (Dckt. 5) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition to Trustee's Motion on August 22, 2018. Dckt. 36. Debtor's counsel indicates that a Modified Plan has been filed to address the delinquency in payments.

RULING

Debtor has filed a Modified Plan to address the delinquency in payments on August 22, 2018. Dckt. 30. Debtor has set a Motion to Confirm the Modified Plan for hearing on October 16, 2018, at 3:00 P.M. This Motion is continued to that hearing date.

A summary review of the Motion(Dckt. 29) and declaration in support (Dckt. 32) appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

Based on the amended plan having been filed and the Debtor appearing got be actively prosecuting the case, the court denies the Motion 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.

2.	<u>16-22877-E-13</u> <u>DPC-2</u>	PATRICIA WHITE Marc Caraska	CONTINUED MOTION TO DISMISS CASE 6-6-18 <u>[33]</u>
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Final Ruling: No appearance at the September 5, 2018, hearing is required.

The Motion to Dismiss is dismissed as moot.
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David Cusick (“the Chapter 13 Trustee”) having filed a new Motion to Dismiss in the same case (Dckt. 41) with a hearing set the same day; no prejudice to the responding party appearing by the dismissal of the Motion, 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 filed a subsequent Motion to Dismiss, Dckt. 41, 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 as moot.

3. [16-22877-E-13](#) **PATRICIA WHITE** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Marc Caraska** **8-3-18 [41]**

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 August 3, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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 Patricia Ann White (“Debtor”) is \$842.00 delinquent in plan payments, which represents multiple 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 filed an Opposition to this Motion on August 20, 2018. Dckt. 47. Debtor's counsel, not providing any declaration or other evidence, indicates Debtor intends to become current under the Plan by this hearing.

Debtor is not proceeding under the terms of her proposed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.	<u>18-23605</u> -E-13	VASILIOS TSIGARIS Marc Caraska	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-15-18 <u>22</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 17, 2018. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on August 10, 2018.

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

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

The court shall issue a minute order 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.

5. [18-22497](#)-E-13 **ROBERT MAC BRIDE** **CONTINUED MOTION TO DISMISS**
[DPC-3](#) **Pro Se** **CASE**
6-11-18 [\[27\]](#)

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 discharged 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

1. Home Mortgage Creditor Deutsche Bank

a. Post-Petition Current Payment.....\$1,846.65

b. 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.

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, the court continued the hearing on the Motion to Dismiss to September 5, 2018, at 10:00a.m. Dckt. 37.

TRUSTEE'S RESPONSE

Trustee filed a Response on August 16, 2018. Dckt. 42. Trustee informs the court that Debtor has not resolved grounds for dismissal, and has paid \$0 to the Trustee to date.

Debtor has not filed supplemental pleadings since the prior hearing on the Motion.

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.

6.	<u>18-22707-E-13</u> <u>DPC-3</u>	MICHAEL/PHYLLIS ENOS Peter Cianchetta	MOTION TO DISMISS CASE 8-15-18 [26]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 15, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee argues that Debtor did not file an Amended Plan or a Motion to Confirm Amended Plan following the court's sustaining Trustee's Objection to Debtor's first proposed plan on July 17, 2018. Dckt. 22. 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).

RULING

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

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

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

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

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

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 August 15, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Douglas J. Scott ("Debtor") is \$1,497.00 delinquent in plan payments under the prior proposed plan, and a \$1,662.00 plan payment will become due before this hearing. 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 additionally that Debtor did not file an Amended Plan or a Motion to Confirm Amended Plan following the court's denial of confirmation to Debtor's prior plan on July 23, 2018. Dckt. 76. 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 is delinquent in payments causing prejudicial delay to creditors in this case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

8. [16-20219-E-13](#) **MAUREEN CLINE** **MOTION TO DISMISS CASE**
 [DPC-4](#) **Scott Hughes** **8-8-18 [68]**

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

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

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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Maureen Sonja Cline (“Debtor”) is \$2,241.00 delinquent in plan payments, which represents multiple months of the \$1,634.00 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). This is also a breach of Debtor’s Plan terms in Section 1.01. 11 U.S.C. § 1307(c)(6).

DEBTOR’S RESPONSE

Debtor’s counsel filed a Response on August 22, 2018, indicating he has not been in contact with Debtor to know whether she will cure the delinquency. Dckt. 72.

RULING

Debtor is delinquent in Plan payments and in breach of the terms of her Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

9.	<u>18-24173</u> -E-13	FERRIC/STACY COLLONS Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-7-18 <u>19</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on August 9, 2018. The court computes that 27 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case: \$79.00 due on August 2, 2018.

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

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

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

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

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

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

10. [16-22850-E-13](#) **JENNIFER SABINE** **MOTION TO DISMISS CASE**
[DPC-2](#) **Thomas Amberg** **8-3-18 [52]**

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

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 August 3, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to October 2, 2018.

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Jennifer Lynne Sabine ("Debtor") is \$1,700.00 delinquent in plan payments, which represents multiple months of the \$575.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on August 6, 2018. Dckt. 56. Debtor indicates it will file an Amended or Modified Plan to cure delinquency in payments.

DISCUSSION

While the Debtor does not provide a declaration or other evidence supporting its Response, the court notes that a Modified Plan and Motion to Confirm Modified Plan have been filed. Dckt. 58, 62.

A summary review of the Motion indicates that it does not comply with the minimum pleading requirements of Federal Rule of Bankruptcy Procedure 9013. While providing a narrative of what has occurred, it does not allege the grounds necessary for the court to confirm a Chapter 13 Plan. It does appear that the declaration provides specific testimony, not merely the Debtor's personal findings and conclusions.

Presumably, counsel for Debtor will be filing a supplement to the motion (serving the Chapter 13 Trustee and U.S. Trustee) stating all of the grounds sufficient for confirmation that were to be stated in the Motion.

In light of Debtor moving to confirm a plan, but the Motion needing to be supplemented, the court continues the hearing on this Motion.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to **October 2, 2018**.

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| 11. | <u>18-23825</u> -E-13 | DARLENE CHIAPUZIO-WONG
Peter Macaluso | ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-23-18 <u>18</u> |
|-----|---------------------------------------|--|---|

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 July 25, 2018. The court computes that 42 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 July 18, 2018.

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

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

The court shall issue a minute order 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—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 July 27, 2018. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Kenneth W. Johnson ("Debtor") is \$17,434.26 delinquent in plan payments, which represents multiple months of the \$4,703.21 plan payment. Before the hearing, two additional plan payments will become 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 further that Debtor is in material default under the Modified Plan because Debtor is delinquent in payments. Section 1.01 and 6 of the Plan (Dckt. 48) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 10, 2018. Dckt. 62. Debtor states he has been periodically deployed on active duty since November 2017 with the United States Air Force Reserve, resulting in reduced income. Dckt. 63. Debtor has been recently notified he is being deployed from August 6, 2018, through November 8, 2018. *Id.*, ¶ 2. Debtor explains that he has requested time off with his employer the California State Prison Solano due to deployment, resulting in drastically reduced income. *Id.*, ¶ 4.

Debtor's counsel explains that it has been difficult to develop a modified plan due to Debtor's frequent deployment and fluctuating income. Dckt. 62 at ¶ 4. Debtor's counsel requests a continuance through Debtor's impending deployment.

RULING

Debtor and his counsel appear to be proceeding under the Chapter 13 case in good faith. However, the facts are simply not in their corner. Debtor states he has been periodically deployed for roughly the past year. Dckt. 63, ¶ 2. Deployment has resulted in drastic reductions in income, causing Debtor to fall delinquent in Plan payments. *Id.*, ¶ 7. Debtor has apparently not provided a new modified plan because his income is unpredictable.

While Debtor's counsel believes more time can remedy the situation, the court is not equally convinced. Debtor has not argued that the recent periodic deployment will end, and very likely Debtor cannot make this assertion.

Debtor has not provided this court with details as to how drastic his income reduction is. In the event Debtor's current situation continues, the court does not know whether any future Modified Plan would be feasible.

Debtor's counsel is asking the court to bear with Debtor as he wades through a period of uncertainty. On the facts here presented, failure to make payments under the Modified Plan is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor's default is also a material breach of the Modified Plan terms. 11 U.S.C. § 1307(c)(6).

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.

13. **[18-23825](#)-E-13** **DARLENE CHIAPUZIO-WONG** **ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso** **TO PAY FEES**
8-22-18 **[\[24\]](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 August 24, 2018. The court computes that 12 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 August 17, 2018.

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

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

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

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

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

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

14. [15-28638-E-13](#) **JOSEPH TARR AND GINA** **MOTION TO DISMISS CASE**
[DPC-3](#) **CHAVES** **8-6-18 [76]**
Ashley Amerio

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 August 6, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Joseph Anthony Tarr and Gina Priscilla Chaves ("Debtor") are \$1,524.00 delinquent in Modified Plan payments, which represents multiple months of the \$606.00 Modified Plan payment. Before the hearing, another Modified 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 further that Debtor is in material default under the Modified Plan because Debtor is delinquent multiple months of payment. Section 1.01 of the Plan (Dckt. 62) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S REPLY

Debtor's counsel filed a Reply (without declaration) on August 22, 2018. Dckt. 80. Debtor's counsel explains that Debtor is seeking new counsel and has ceased communicating with counsel of record. Debtor's counsel requests a 30 day continuance be granted.

RULING

Debtor's counsel has filed a response requesting continuance, but has not provided a declaration or other evidence for the court. While the court may believe that Debtor is not communicating with current counsel, the court has no idea what Debtor could be doing to try and prosecute this case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

15. [16-20740-E-13](#) **EMMA MCZEEK-TANKO** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Thomas Amberg** **8-3-18 [115]**

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

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 August 3, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Emma McZeek-Tanko (“Debtor”) is \$300.00 delinquent in plan payments, which represents one month of the \$300.00 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 further that Debtor is in material default under the Modified Plan because Debtor is delinquent multiple months of payment. Section 2.01 and 7.01 of the Modified Plan (Dckt. 105) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on August 6, 2018. Dckt.119. Debtor's counsel does not oppose the Motion, but merely requests a hearing and for such other relief the court deems proper. Debtor's counsel asserts Debtor either plans to become current on payments or file a Modified Plan by this hearing.

RULING

Debtor has not explained failure to proceed under the terms of the Modified Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

16. [18-24144](#)-E-13 JILL ROBERTS-WILSON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-6-18 [[20](#)]

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.

The Order to Show Cause was served by the Clerk of the Court on Debtor (*Pro Se*), and Chapter 13 Trustee as stated on the Certificate of Service on August 8, 2018. The court computes that 28 days' notice has been provided.

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

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

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

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

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

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

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

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

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 August 20, 2018. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") argues that several grounds justify dismissal of Debtor in *Pro Se* Jill S. Roberts Wilson's ("Debtor") case.

First, Trustee asserts Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. The Meeting was held on August 16, 2018 and has been continued to October 18, 2018. 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).

Second, Trustee argues that the Amended 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. This is a violation of Federal Rule of Bankruptcy Procedure 3015.1 and General Order 17-03. Failure to file a plan on the current form is a delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, 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).

Fourth, 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).

Finally, Trustee points out the IRS (Proof of Claim, No. 1) states Debtor has not filed tax returns for 2014, 2015, or 2017. 11 U.S.C. §§ 1308, 1325(a)(9).

Debtor has not filed an opposition or response explaining the numerous deficiencies in her case. Debtor's failure to proceed with her case is unreasonable delay and cause to dismiss the case. The Motion to Dismiss 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.

18.	<u>17-27449</u> -E-13 <u>DPC-3</u>	BONITA MELENDEZ Rick Morin	MOTION TO DISMISS CASE 8-6-18 [62]
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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 August 6, 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 denied.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Bonita Thomas Melendez (“Debtor”) is \$4,550.00 delinquent in plan payments, which represents multiple months of the \$2,275.00 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 August 22, 2018. Dckt. 66. Debtor explains that she fell behind on Plan payments after her dog became ill, requiring \$4,800.00 in life-saving veterinary expenses. Dckt. 67. Debtor states she is 65 and relies on her pets for companionship and support. *Id.*

Debtor filed her Chapter 13 case to prevent foreclosure on her home and requests the court deny Trustee’s Motion to afford time for filing a Modified Plan. *Id.*

MODIFIED PLAN

Debtor filed a Modified Plan on August 29, 2018. Dckt. 72. Debtor’s proposed Modified Plan provides for an increase in plan payments to \$2,475.00 for the remaining 51 months of her Plan in order to cure her delinquency. Dckt. 72 at 7.

Debtor has filed a Motion to Confirm the Modified Plan. Dckt. 69. Debtor indicates she is expecting a personal injury settlement to be distributed through her past Chapter 7 Case, No.14-28030, which will allow her to make the increased payments. Dckt. 71, ¶ 8.

A summary review of the Motion (Dckt. 69) and Declaration in support (Dckt. 71) appear to be consistent with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and the declaration provides specific testimony, not merely the Debtor’s personal findings and conclusions.

RULING

While Debtor fell behind on payments, she has presented a Modified Plan, filed a Motion to Confirm that Plan, and provided an explanation of sudden, unanticipated expenses. Whether the Modified Plan will actually be confirmable (given Debtor is increasing payments immediately, but explains she can afford the increased payments based on an anticipated future lump sum) is not here at issue. Debtor has shown she is proceeding in good faith, and her delay is not unreasonable given the facts presented. This is particularly true where the Plan proposes a 100% dividend to all creditors with allowed claims.

Based on the amended plan having been filed and the Debtor appearing to be actively prosecuting the case, the court denies the Motion 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.

19.	<u>18-22301</u> -E-13	KATISHA BROWN Candace Brooks	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-23-18 [38]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor’s Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 25, 2018. The court computes that 42 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 July 17, 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. An additional Order to Show Cause for failure to pay fees was filed August 21, 2018. Dckt. 45. The following filing fees are delinquent and unpaid by Debtor: \$154.00.

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.

20. [18-22301](#)-E-13
[DPC-2](#)

KATISHA BROWN
Candace Brooks

CONTINUED MOTION TO DISMISS
CASE
6-11-18 [\[24\]](#)

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

Local Rule 9014-1(f)(1) Motion—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).

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

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.

JULY 11, 2018, HEARING

At the Hearing, the court continued the hearing on the Motion to Dismiss to September 5, 2018, at 10:00 a.m. Dckt. 34. No supplemental pleadings have been filed.

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.

At the hearing, ~~XXXXXXXXXXXXXXXXXXXXXXX~~

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

Findings of 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.

21.	<u>17-23956-E-13</u> <u>DPC-1</u>	JULIE MCAULIFFE Thomas Amberg	MOTION TO DISMISS CASE 8-3-18 [20]
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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 August 3, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Julie McAuliffe (“Debtor”) is \$292.00 delinquent in plan payments, which represents one month of the \$231.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues that Debtor is in material default under the Plan because of Debtor's delinquency in payments. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 7. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 6, 2018. Dckt. 24. Debtor's counsel asserts Debtor will either become current in payments or file a Modified Plan prior to this hearing. No declaration or supporting evidence is provided.

RULING

Debtor is not proceeding under the terms of the Plan and has not offered evidence that she intends to remedy the situation. 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.

22. [17-26420-E-13](#) **MARK TURPIN** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Mohammad Mokarram** **8-3-18 [35]**

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 August 3, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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 Mark Anthony Turpin (“Debtor”) is \$2,540.00 delinquent in plan payments, which represents multiple months of the \$900.00 plan payment. Before the hearing, another plan payment will be due. Debtor will need to pay \$3,440.00 in order to bring the plan current by the date of the hearing. 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 August 22, 2018. Dckt. 39. Debtor explains he is a business owner and has had unexpectedly slow months. Dckt. 40. Debtor is attempting to become current but is also looking into the possibility of converting the case to one under Chapter 7.

RULING

Debtor is delinquent several Plan payments and is uncertain he will be able to cure the deficiency. 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.

23. [17-24967](#)-E-13
[DPC-2](#)

BARBARA GRAVES
Gary Fraley

CONTINUED MOTION TO DISMISS
CASE
6-13-18 [\[47\]](#)

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 granted.

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.

JULY 11, 2018, HEARING

At the July 11, 2018, Debtor and Debtor's counsel both promised to diligently prosecute the recovery of the tax refunds and get the monies paid into the Plan. Dckt. 54. The court continued the hearing on the Motion to Dismiss to September 5, 2018.

No supplemental pleadings have been filed.

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, **XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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

Findings of 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**.

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 August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Michelle Hargaray ("Debtor") is \$3,350.42 delinquent in plan payments, which represents multiple months of the \$1,579.68 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 is in material default under the Plan because of the above referenced delinquency. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 37. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 68. Debtor's opposition asserts Debtor made a \$1,579.68 payment on August 13, 2018. Debtor's counsel indicates he has not been in contact with Debtor and requests a continuance. Debtor's counsel fails to provide a declaration or other evidence supporting his statements.

RULING

Debtor is delinquent multiple plan payments and does not appear to be proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

25.	<u>14-32371</u> -E-13 <u>DPC-2</u>	JAMES/MONA STILES Scott Hughes	MOTION TO DISMISS CASE 8-6-18 <u>[64]</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 Debtors, Debtors’ Attorney, and Office of the United States Trustee on August 6, 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). Debtors 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 James and Mona Stiles (“Debtor”) are \$2,985.37 delinquent in plan payments, which represents multiple months of the \$1,372.86 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).

The Chapter 13 Trustee argues that Debtor is in material default under the Plan because of the above referenced delinquency. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 31. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition/Declaration amalgamation on August 22, 2018. Dckt. 68. FN.1. Debtor's counsel states he was *told* Co-Debtor has surgery causing Debtor to fall behind on payments, but that all payments have been made excepting for the August 25, 2018, payment. Counsel requests if Debtor is "almost current" that this court grant a continuance, then requests the Motion be denied based on the Opposition.

Evidence presented by Debtor's counsel is hearsay and not admissible. *Fed. R. Evid.* 801.

FN.1. Local Bankruptcy Rule 9004-2(c)(1) provides that each document be filed *separately*. This rule is not overly complex or burdensome. Debtor's counsel has presented the court with a Frankenstein pleading. Debtor's counsel is failing to conform his practice to the requirements of law at his own risk. *See* LOCAL BANKR. R. 1001-1(g).

RULING

Debtor is delinquent in payments and has not proceeded under the terms of the Plan. Debtor's counsel has advanced explanations, all of which are not admissible evidence. 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. [18-23072-E-13](#) STEVEN/SHARON COLLINS CONTINUED MOTION TO DISMISS
[DPC-2](#) Peter Macaluso CASE AND/OR MOTION TO CONVERT
CASE FROM CHAPTER 13 TO CHAPTER
7
6-21-18 [\[20\]](#)

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*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 -----.

The Motion to Dismiss is XXXXXXXXXXXXXXXXXXXXX.

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).

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, the court continued the hearing on the Motion to Dismiss to 10:00 a.m. on September 5, 2018, in part to consider conversion of this case to Chapter 7 in light of the substantial non-exempt equity in the property of the estate. Dckt. 44.

DEBTOR'S REPLY

Debtor's counsel filed a Reply on August 13, 2018, stating that he substituted into the case August 10, 2018, and requesting additional time to meet with Debtor and file Amended Schedules and an Amended Plan. Dckt. 64.

Debtor's counsel has not provided an declaration or other evidence supporting his Reply.

DISCUSSION

At the hearing, **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

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

Findings of 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 **XXXXXXXXXXXXXXXXXXXXXX**.

27. [18-21311-E-13](#) **CHARLES BENSON AND** **MOTION TO DISMISS CASE**
[DPC-2](#) **CHRISTINE WESLEY BENSON** **8-8-18 [51]**
Michael Hays

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 August 8, 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 granted, and the case is dismissed.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Charles Raymond Benson and Christine Elizabeth Wesley Benson (“Debtor”) are \$3,336.00 delinquent in plan payments, which represents multiple months of the \$834.00 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). Failure to make payments is also a material breach of the terms of the Plan Section 2.01. 11 U.S.C. § 1307(6)(c)

DEBTOR’S RESPONSE

Debtor’s counsel filed a Response on August 21, 2018, indicating he has not heard from Debtor as to whether payments will be cured. Dckt. 55.

RULING

Debtor is delinquent in payments in breach of the Plan terms, causing prejudicial delay to creditors in this case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

28.	<u>16-23473-E-13</u> <u>DPC-1</u>	JOSEPHINE WILLIAMS Kristy Hernandez	CONTINUED MOTION TO DISMISS CASE 6-6-18 [24]
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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 XXXXXXXXXXXXXXXXXX.
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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 (who is 72 years of age) 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.

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, counsel for Debtor reported that Debtor's family is working to help her cure the default. The hearing was continued to September 5, 2018, to allow the Debtor and her family to address these matters.

No supplemental pleadings have been filed.

RULING

At the hearing, **XXXXXXXXXXXXXXXXXXXX**.

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

Findings of 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 **XXXXXXXXXXXXXXXXXXXX**.

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 July 2, 2018. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on several grounds. First, Yevgeniy Zhilovskiy ("Debtor") did not appear at the Meeting of Creditors as required by 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 First Meeting of Creditors was held on June 28, 2018, and Debtor did not appear. The meeting was continued to August 16, 2018, and the Debtor did not appear.

Second, Debtor is \$110.00 delinquent in plan payments, and has yet to commence payments under the proposed Plan. Before the hearing, another plan payment will be due on July 25, 2018. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, 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).

Finally, 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 also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

TRUSTEE'S STATUS REPORT

The Chapter 13 Trustee filed a Status Report on August 21, 2018, indicating Debtor appeared at the continued Meeting of Creditors and provided tax returns and pay advices. Dckt. 35.

Trustee states further Debtor made the two previous Plan payments totaling \$220.00. However, Trustee notes that Proof of Claim, No. 1 filed by Rushmore Loan Management Services, LLC on July 27, 2018, demonstrates that the monthly amount owed to this creditor is \$2,074.23 and not the \$550.00 provided under the Plan. Trustee believes adjusting the Plan payments to cover this Class 1 claim shows Debtor remains \$3,295.62 in payments. Dckt. 37.

Trustee also notes that Debtor has filed an Amended Plan (Dckt. 30), but has not served it on parties in interest or filed a motion to confirm the Amended Plan. Dckt. 35.

AMENDED PLANS

Subsequent to Trustee's Status Report, on August 29, 2018, Debtor filed another Amended Plan. Dckt. 38. Debtor's latest Amended Plan reflects a new monthly payment of 2,074.00 (roughly what the Trustee indicates is necessary given the Class 1 Claim of Rushmore).

DISCUSSION

Trustee's arguments are well taken. When considering amounts that would actually need to be paid under a potentially confirmable Amended Plan, Debtor is delinquent in Plan payments. Debtor has filed two Amended Plans since Trustee's Motion to dismiss, but has not provided notice of those filings, and has not filed a motion to confirm either plan.

Debtor is in *Pro Se* and is clearly struggling with what is required in a Chapter 13 case by law, and with what a potentially confirmable Chapter 13 plan would be. With counsel, Debtor may be able to create and follow a successful plan. Debtor's Schedules I and J demonstrate a disposable income of \$2,349.00, which is above the amount allegedly necessary under the Amended Plan.

Currently, Debtor lists a single debt on his Schedule E/F, which he describes as a nonpriority unsecured claim of Rushmore Loan Management Services. Dckt. 13 at 20. This contradicts Debtor's Petition which indicates Debtor estimates his liabilities between \$500,001-\$1 million. Voluntary Petition, Question 20, Dckt. 1 at 6. No creditors being listed other than the mortgage-holder with arrears Debtor clearly wants

to pay off while keeping his home, the court seriously questions whether Debtor has filled out his Petition and Schedules accurately, despite their being provided under penalty of perjury.

The Second Amended Plan provides for only \$120.00 a month in plan payments. Plan ¶ 2.01, Dckt. 38. This is insufficient to make the one creditor payment, the current monthly mortgage payment stated to be \$2,074 and the cure payment for the stated \$54,000.00 pre-petition arrearage (\$900 a month amortized over sixty months) for the “Rushmore” secured claim, as well as the additional \$237.92 Chapter 13 Trustee’s fee amount.

Two proofs of claim have been filed. Proof of Claim No. 1 is filed by MTGLQ Investors, listing notices and payments to be sent to “Rushmore Loan Management Services.” The claim is filed in the amount of \$458,100.55, of which \$255,613.00 is asserted to be the pre-petition arrearage. Proof of Claim No. 1 asserts that it is secured by a deed of trust against the Olive Point Way Property. The deed of trust attached to Proof of Claim No. 1 has a recorded date of April 11, 2003.

Proof of Claim No. 2 was filed by Bank of New York Mellon in the amount of \$256,813.53. It is asserted to be secured by the 3459 Wildwind Court property. There is only a \$137.64 arrearage stated for this property.

On Schedule J no payment is listed by the Bank of New York Mellon claim (Dckt. 13 at 31) and no provision is made in Class 4 for the payment of such claim. On Schedule A Debtor does not list any interest in the Wildwind Court Property. Dckt. 13 at 3.

Debtor has had several prior bankruptcy cases. In case number 13-29153, Debtor stated under penalty of perjury on Schedule A that he owned no real property. 13-29153; Dckt. 13 at 3. On the Petition in the prior case, Debtor listed their street address as the Wildwind Court Property and their mailing address as the Olive Point Property. *Id.*; Petition, Dckt. 1.

In another prior Chapter 13 case filed in 2011, Debtor listed his address as the Olive Point Property. 11-44128; Petition, Dckt. 1. On Schedule A in the 2011 case Debtor lists on Schedule A having no interest in any real property. *Id.*, Dckt. 20 at 3. However, on Schedule B Debtor lists having a “Pending lawsuit againsts [sic] Countrywide Home Loans & Bank of America.” *Id.* at 5.

Further, in the prior 2011 Chapter 13 case Debtor lists Bac Home Loans Servicing as having a \$248,137 unsecured claim for “Mortgage account opened 2003-03-17 6764 Olive Point Way, Roseville, CA 95687.” *Id.* at 10. Additionally, an unsecured claim for Bank of America is listed for “Open account opened 2006-08-16 Rental Property; 3459 Wildwind Court, Sacramento, CA 95827. *Id.* A third unsecured claim is listed for Bank of America for “Creditline account opened 2004-12 6764 Olive Point Way, Roseville a 95878.” *Id.* at 11.

It appears that the above “unsecured claims” relate to the secured claim that are the subject of Proofs of Claim Nos. 1 and 2 in the current case.

On Schedule D in the current case Debtor lists no creditors with secured claims. Dckt. 13 at 15. On Schedule F Debtor now lists “Rushmore” as the only creditor having an unsecured claim of \$267,120.00.

Id. at 13.

It appears from the various documents filed under penalty of perjury and the proofs of claims filed, that Debtor may actually have interests in several parcels of real property. Additionally, it appears Debtor may have claims which are not disclosed on the Schedules and secured claims not provided for in the Plan.

Debtor's delinquency in Plan payments and failure to propose a potentially confirmable Amended Plan are prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1)

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 15, 2018. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the 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 Linda Vanpelt ("Debtor") is \$3,500.00 delinquent in plan payments, which represents one month of the \$3,500.00 plan payment. Before the hearing, another plan payment will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Chapter 13 Trustee argues further that Debtor did not file a Amended Plan or a Motion to Confirm Amended Plan following the court's denial of confirmation to Debtor's prior proposed plan on June 26, 2018. Dckt. 160. 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. This case was initiated on July 25, 2017. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Debtor is not proceeding under the terms of her proposed Plan, and has not proposed a new Amended Plan since her previous Motion to Confirm Amended Plan was denied. 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.

31. [18-23177](#)-E-13 **MOHAMAD SALIM**
 Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-25-18 [\[21\]](#)**

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

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 July 27, 2018. The court computes that 40 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 July 20, 2018.

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

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

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

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

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

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

32. [18-23177-E-13](#) **MOHAMAD SALIM** **MOTION TO DISMISS CASE**
 [DPC-2](#) **Pro Se** **8-2-18 [28]**

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 (*pro se*) and Office of the United States Trustee on August 2, 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 (*pro se*) has 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”) seeks dismissal of the case on the basis that Mohamad Salim (“Debtor”) is \$3,080.00 delinquent in plan payments, which represents multiple months of the \$1,540.00 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 further 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 July 31, 2018. Dckt. 27. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 21, 2018. Dckt. 35. Debtor objects generally and requests a continuance to allow him additional time to obtain counsel.

RULING

Debtor is not proceeding under the terms of the proposed Plan, and has not filed an Amended Plan subsequent to Trustee's Objection to Confirmation being sustained. 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 Debtors, Debtors' Attorney, and Office of the United States Trustee on August 6, 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). Debtors 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 Manuel and Virginia Madrid ("Debtor") are \$2,370.00 delinquent in plan payments, which represents multiple months of the \$1,186.00 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 is in material default under the Modified Plan because of this delinquency. Section 2.01 and 7.01 of the Modified Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 83. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTORS' OPPOSITION

Debtors filed an Opposition on August 22, 2018. Dckt. 105. Debtors indicate they will become current on payments by this hearing.

RULING

Debtors have not proceeded under the terms of their Modified Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

34. [14-26385-E-13](#) **PATRICIA SIMS** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Helga White** **8-6-18 [73]**

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 August 6, 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”) seeks dismissal of the case on the basis that Patricia Sims (“Debtor”) is \$7,440.05 delinquent in plan payments, which represents multiple months of the \$2,260.05 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 is in material default under the Plan because of this delinquency. Sections 1.01 and 6.1 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 77. Debtor's counsel states she believes Debtor intends to cure the delinquencies and requests a continuance. Debtor's counsel has not provided a declaration or other evidence supporting her Opposition.

RULING

Debtor has not proceeded under the terms of the Plan, and has not provided any explanation for the delinquent payments. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

35. [18-20885-E-13](#) **ANTHONY/WENDY GIANOLA** **MOTION TO DISMISS CASE**
[DPC-3](#) **Peter Macaluso** **7-19-18 [42]**

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 Debtors, Debtors’ Attorney, and Office of the United States Trustee on July 19, 2018. By the court’s calculation, 48 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). Debtors filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee argues that Anthony and Wendy Gianola (“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 Debtors have not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTORS’ OPPOSITION

Debtors filed an Opposition on August 22, 2018. Dckt. 49. Debtor’s counsel indicates Debtor will file an amended plan once Debtor’s tax returns have been completed and filed. No declaration or other evidence is provided to support these assertions.

RULING

Debtor has not filed an Amended Plan since the court denied confirmation of the proposed plan in April 2018. Debtor has not provided any response supported by evidence upon which this court can make a determination. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

36. [16-22687](#)-E-13 **DAVID/SHARON NEIHART** **MOTION TO DISMISS CASE**
[DPC-2](#) **Aubrey Jacobsen** **8-6-18 [35]**

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 August 6, 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”) seeks dismissal of the case on the basis that Kenneth W. Johnson (“Debtor”) is \$8,157.90 delinquent in plan payments, which represents multiple months of the \$4,077.22 plan payment. Before the hearing, an additional plan payment will become 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 further that Debtor is in material default under the Confirmed Plan because Debtor is delinquent in payments. Section 1.01 of the Plan (Dckt. 12) makes that delinquency a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 39. Debtor states, without presenting a declaration or other evidence upon which this court can rely, that Debtor plans to file a Modified Plan before this hearing curing the delinquency.

A review of the docket shows no Modified Plan has been filed.

RULING

Debtor has not proceeded under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Michael Lynn Lache Hatcher ("Debtor") is \$3,000.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Before the hearing, another plan payment will be due. 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 further that Debtor is in material default under the Confirmed plan because Debtor is delinquent in payments. Section 2.01 of the Confirmed Plan (Dckt. 5) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor's counsel filed an Opposition on August 22, 2018, indicating that Debtor has not communicated with counsel. Dckt. 31.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-3-18 [40]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 5, 2018. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on July 30, 2018.

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

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

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

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

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

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

39. [15-27295-E-13](#) **ERROL/ALITA MERCADO** **MOTION TO DISMISS CASE**
[DPC-9](#) **Richard Jare** **8-6-18** [\[165\]](#)

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 August 6, 2018. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Errol Shane Mercado, Sr. and Alita Pangilnan Mercado ("Debtor") are \$3,726.00 delinquent in plan payments, which represents multiple months of the \$675.00 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 to this Motion on August 22, 2018. Dckt. 169. Debtor states Debtor can make some payment through TFS Moneygram, and will become current before this hearing. Dckt. 170. Debtor explains Debtor's Plan allows Debtor to keep Debtor's financed vehicle, and understand the Plan requires they pay \$4,401.00 by August 25, 2018. *Id.* Debtor explains further Debtor fell behind due to school and moving expenses.

RULING

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion. Further, Debtor having only \$675.00 of projected disposable income to fund the Plan, Debtor fails to offer any explanation as to how Debtor can fund a \$4,400 payment in one month. As noted by the court in recently denying a Motion to Confirm a Modified Plan, Debtor's last Supplemental Schedules I and J filed (now two years old and providing stale information) show Debtor having only \$450.00 a month in net income to fund a plan.

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

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

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2018. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

Delinquent

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Avinash Singh ("Debtor") is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Over Secured Debt Limit

The Chapter 13 Trustee asserts that Debtor is over the secured debt limit, disqualifying Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, Debtor lists on Schedule D \$1,593,902.00 in secured debt.

Cause exists to dismiss the case. The Motion is granted.

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

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

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

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

Tentative Ruling: The Motion Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 August 5, 2018. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is Granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Leo August ("Debtor") is \$5,600.00 delinquent in plan payments, which represents two months of the \$2,800.00 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 is in material default under the Plan because of his delinquency of payments. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 47. Debtor's counsel states within the Opposition that Debtor has cured the delinquency by making two payments of \$2,800.00. Debtor's counsel indicates further that Debtor missed payments due to an issue with his bank account, and in reliance on statements of the Trustee's office.

Debtor filed a supporting Declaration explaining that \$700.00 was withdrawn from his bank account by someone (presumably without permission). Dckt. 48, ¶ 3. Debtor also states when he contacted the Trustee's office they informed him he was current on payments, causing him to put funds towards plumbing and medical expenses. *Id.*, ¶ 4. Debtor states further that he will make two payments immediately to become current under the Plan. *Id.*, ¶ 6.

The court notes that Debtor's Declaration is unsigned, and therefore is not evidence upon which this court can rely. *Id.*, 2:19.5.

In the Declaration document Debtor does not provide the court with when the alleged contact with the Chapter 13 office occurred. Additionally, Debtor does not purport to explain why he was contacting the Trustee's office to see if he was delinquent in payments rather than just look at his own records. Debtor should know whether he made payments or not.

Debtor provides as Exhibit 1, a receipt demonstrating payment to the Trustee on August 10 and 21, 2018, in the amount of \$2,807.99 each. Exhibit 1, Dckt. 49. However, Debtor has made no attempt to authenticate this Exhibit, offering it as evidence for this court to rely on. Debtor's Declaration document does not make reference to what is shown in Exhibit 1. Dckt. 48. Moreover, as stated, the Declaration is not signed. *Id.*

Debtor does not attempt to explain to the court how he had \$5,600.00 to make the two alleged payments in August 2018. Under the confirmed Chapter 13 Plan in this case Debtor is required to make monthly plan payments of \$2,800.00 each. Order confirming Plan, Dckt Dckt. 22. For distributions under the Plan, Debtor has \$1,624.54 a month in payments for the secured claim on his residence. *Id.* ¶ 2.08. Then payment of \$3,500.00 to Debtor's attorney and \$9,600 in Chapter 13 Trustee fees. However, Debtor had on projected disposable income to provide more than a 0.00% dividend for creditors with general unsecured claims. *Id.* ¶ 2.15.

The court has relied on the financial information provided under penalty of perjury on Amended Schedules I and J in the confirmation of Debtor's Plan. Dckts. 20, 31. In this information Debtor reports having monthly net income of \$4,747 a month, necessary expenses of (\$1,954.27) and monthly net income of \$2,803 a month. There does not appear to be a source of disclosed monies from which a \$5,600 lump sum payment could be made to cure the multiple defaults.

TENTATIVE RULING

Debtor is delinquent two Plan payments and has not provided any credible explanation for the failure to stay current under his Plan. Debtor has not provide any information as to why or how he could have “extra” monies to make such a substantial extra payments under a Plan for which there are not such funds to make any distribution to creditors holding general unsecured claims.

The Motion is granted, and the case is dismissed.

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

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

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

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

42. [18-21644](#)-E-13 ANGELO/LISA OLIVA **MOTION TO DISMISS CASE**
 [DPC-2](#) Anh Nguyen 8-2-18 [39]

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on August 2, 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 Angelo Oliva; Lisa Renee Oliva (“Debtor”) are \$10,396.00 delinquent in plan payments, which represents multiple

months of the \$5,184.50 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 asserts that Debtor did not properly serve the Amended Plan on all interested parties and has yet to file a motion to confirm the Amended Plan. The 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 Debtors had filed a Motion to Confirm Amended Plan August 2, 2018, the same day this Motion was filed. Dckt. 43.

DEBTOR'S OPPOSITION

Debtors filed an Opposition on August 23, 2018. Dckt. 48. Debtors explain they fell behind in their payments to the Chapter 13 Trustee because Timeless Homecare, Inc. ("Timeless Homecare"), the senior home healthcare business that employs both Debtors (Debtor is the owner of this business), experienced some delays in payments from its patients' long-term care insurance policies and because Timeless Homecare was also required to pay its license renewal fees to the State of California. Dckt. 49. FN.1.

Debtors indicate further they made a payment on August 13, 2018, of \$5,184.50 to the Trustee and they anticipate paying \$10,396.00 on or before August 28, 2018 in order to bring their plan payments current. *Id.*

FN.1. No certificate of service was provided for Debtors' Opposition or Declaration. It appears notice was not provided to parties in interest. Because the Opposition does not resolve the Trustee's grounds for dismissal, the court is merely providing an overview of the supplemental pleadings as provided.

RULING

Debtors have failed to proceed under the terms of their Plan and are unsure whether they will become current on payments by this hearing. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 July 19, 2018. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") filed a Motion to Dismiss the case of Craig Steven Mason ("Debtor"). Trustee asserts Debtor did not file a Amended Plan or a Motion to Confirm Amended Plan following the court's denial of confirmation to Debtor's prior plan on May 25, 2018. Dckt. 108.

Trustee also argues Debtor admitted at the Meeting of Creditors that the federal income tax returns for the 2016 and 2017 tax years have not been filed. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9).

Trustee requests the case be dismissed unless Debtor:

1. Files and serves an Amended Plan no later than August 22, 2018.
2. Debtor becomes current under the Plan no later than August 22, 2018.
3. Debtor files copies of business and personal tax returns for 2017 and 2016.
4. Debtor files a response no later than August 22, 2018, explaining why delay was reasonable.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 120. Debtor's counsel argues the following:

1. Every reasonable effort has been made to fulfill the filing requirements of this case. There may have been delays, but these were not unreasonable or foreseeable.
2. 2016 taxes (which were on extension and therefore not due yet at the time for the initial filing of this case) have been completed and filed and a copy has been transmitted to the Trustee on the August 22, 2018.
3. 2017 taxes are on a valid extension and are schedule to complete within the time proscribed by the Internal Revenue Service Extension rules.
4. There was an accrual of \$6000.00 in tax debt for 2016 which has been accounted for in the newest plan filed on August 20, 2018.
5. The trustee raises the March 30, 2018 declaration of the debtor which expressed his firm commitment to finalizing the taxes earlier than he was eventually able. This is an unfair representation to the court as the debtor made an incredibly detailed supplemental declaration that laid out all efforts taken to meet this expectation and the set back encountered on the way. That Supplemental declaration was taken into consideration by this court and given persuasive treatment. The debtor has made every payment and is continuing to make every effort to confirm this plan. The funds are available to disburse if we can agree to confirm the newest plan now that 2016 taxes are done and 2017 taxes are on a valid extension.

Debtor has provided a Declaration in Opposition to this Motion. Dckt. 121. Rather than providing any specific testimony, Debtor merely states:

“I have reviewed the reply to this Motion, as prepared by my attorney. We further agree and concur with the facts as presented therein. Namely that my taxes for 2016 are done and that I am on a valid extension for 2017 personal and business and I am still diligently pursuing the completion of those taxes.”

Rather than being willing to make any specific statements under penalty of perjury, Debtor's testimony is in the nature of hearsay testimony, “what ever my attorney argued in the Opposition is my testimony.” This is not personal knowledge testimony (Fed. R. Evid. 601, 602), but merely attorney arguments made to appear to be faux testimony.

RULING

A review of the docket shows Debtor has filed an Amended Plan as of August 20, 2018. Dckt. 118. The Motion to Confirm and supporting Declaration (Dckts. 114, 116,) appear to state grounds with particularity (Fed. R. Bankr. P. 9013) and provide personal knowledge testimony (as opposed to the “declaration” filed in opposition to the current Motion).

The proposed Fourth Amended Plan requires a \$5,750 a month payment (stepping up to \$5,950 in month fourteen). Dckt. 118. For distributions, in addition to \$3,850 to Debtor’s counsel and the Chapter 13 Trustee’s fees, Debtor provides for payment of the current monthly mortgage and the cure payment on a \$92,344.15 pre-petition arrearage, \$19,200 in priority unsecured claims, and a 5% dividend for unsecured claims.

On Schedule I Debtor states that he has been self-employed for 16 years and has \$4,620 in monthly net business income. Debtor also states that he is receiving \$778 in family support payments, \$800 in rent, and \$3,000 in contribution from his fiancé. Dckt. 27 19-20. This totals \$9,198 in income.

On Schedule J Debtor lists as dependents his fiancé, two children, and his fiancé’s daughter. It is not clear if the \$3,000 a month contribution is all of Debtor’s fiancé’s income or just part.

No gross income and expenses for Debtor’s business is provided with Schedule I. Dckt. 27. No provision is made on Schedule I or Schedule J for Debtor to pay his self-employment tax, federal income tax, or state income tax for Debtor’s self-employment income and the \$9,600 of rental income.

While filing a Plan, the Debtor’s financial information appears to be so facially defective that it is impossible for Debtor to show that prosecution of the bankruptcy Plan and this case is possible. The court is unaware of any exemption from self-employment taxes, federal income tax, and state income tax for Debtor.

Additionally, the court does have evidence of whether Debtor has actually provided tax returns as argued by Debtor’s counsel. Failure to file a tax return is a ground to dismiss the case. 11 U.S.C. § 1307(e).

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.

44. [18-22010-E-13](#) **JERRY/CAROLINE CHAVEZ** **MOTION TO DISMISS CASE**
[DPC-3](#) Jeffrey Ogilvie 7-19-18 [\[33\]](#)

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 July 19, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) argues that Jerry and Caroline Chavez (“Debtor”) did not file a Amended Plan or a Motion to Confirm Amended Plan following the court’s sustaining Trustee’s Objection to Debtor’s prior plan on July 12, 2018. Dckt. 26.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor offers the following explanation for the delay in setting the Plan for confirmation: Debtor’s were unaware that the \$175,000.00 homestead exemption applied to their case and that the initially denied plan was inappropriate. Further, Debtor’s counsel has been impaired due to the Carr fires in Northern California. At least one of counsel’s staff has been displaced from her home as a result of the fire. This is the result of the delay.

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 22, 2018. Dckt. 37. Debtor’s counsel explains that delay in this case was caused substantially by the Carr Fire, and adds that joint-debtor is currently hospitalized.

Debtor’s counsel states that the Trustee’s Objection to Debtor proposed plan was sustained due to Debtor’s failure in claiming its homestead exemption of \$175,000.00. Debtor’s counsel argues he did not respond to Trustee Objection to Claim of Exemption mistakenly, believing Trustee would withdraw the objection based on mutual understanding.

While Debtor filed an Opposition, no supporting evidence has been provided.

RULING

Debtor has not provided with its Opposition any evidence upon which this court can make determinations. Debtor has not filed an Amended Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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*, Debtor's Attorney, and Office of the United States Trustee on August 10, 2018. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Thomas Ray Meadows, Debtor in *Pro Se* ("Debtor"), is \$15.00 delinquent in plan payments, which represents one month of the \$15.00 plan payment. Debtor has not yet commenced payments under the proposed plan, and another payment will become due by this hearing. 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 further 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 on July 30, 2018, after the notice of the Meeting of Creditors was issued. Dckt. 16. 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).

RULING

Debtor is not proceeding under the terms, and has not sought confirmation of, the proposed plan. Furthermore, the court notes an Order to Show Cause set for hearing the same day has been tentatively granted dismissing this case for failure to pay fees. 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—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.

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

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.

JULY 11, 2018, HEARING

At the July 11, 2018, hearing, the court continued the hearing on the Motion to Dismiss to September 5, 2018, at 10:00a.m. Dckt. 39.

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.

47. [16-23686-E-13](#) **ROMAN VICTORIA-SANCHEZ** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mohammad Mokarram** **8-3-18 [20]**

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 August 3, 2018. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Delinquent

David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Roman Victoria-Sanchez ("Debtor") is \$1,350.00 delinquent in plan payments, which represents multiple months of the \$450.00 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 further that Debtor is in material default under the Confirmed Plan because Debtor is delinquent multiple months of payment. Section 1.01 of the Plan (Dckt. 7) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR'S REPLY

Debtor filed a Reply on August 22, 2018. Dckt. 24. Debtor indicates he fell behind on Plan payments after having to cover attorney fees for his non-filing spouse in a separate matter. Dckt. 25. Debtor will attempt to become current by this hearing. *Id.*

Debtor's counsel notes Debtor has less than a year remaining in Plan payments. Dckt. 24.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Debtor indicates he may cure delinquent payments and provides no other plan of action. 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 August 2, 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>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Vasilios Tsigaris ("Debtor") is \$3,779.11 delinquent in plan payments, which represents one month of the \$3,779.11 plan payment. Debtor has not made any payments under the proposed Plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Chapter 13 Trustee also seeks dismissal of this case based on Debtor's failure to file the following required documents:

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

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 also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 20, 2018. Dckt. 25. Debtor's counsel argues that Debtor has made one payment of \$3,779.11, and will make the next required installment due before the hearing. Debtor's counsel also indicates he is working with Debtor to assemble the necessary business documents.

However, no declaration or other evidence is provided in support of counsel's assertions.

RULING

Debtor has failed to make payments under his Plan and has not provided required business documents. 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.

49.	<u>18-23766</u> -E-13	PAULETTE HACKER Pro Se	CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 6-15-18 [1]
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Debtor's Atty: Pro Se

The Status Conference is XXXXXXXXXXXXXXXXXXXXXX.
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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

September 5, 2018 at 10:00 a.m.

- Page 79 of 134 -

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

September 5, 2018 at 10:00 a.m.

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).

50. [18-23766](#)-E-13 **PAULETTE HACKER**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-20-18 [\[29\]](#)

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on July 22, 2018. The court computes that 45 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 July 16, 2018.

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

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

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

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

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

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

51. [18-23766](#)-E-13 **PAULETTE HACKER**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-20-18 [\[35\]](#)**

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on August 22, 2018. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on August 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. By the time of this hearing, another payment has become due. 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: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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 July 30, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee") seeks dismissal of Paulette LaVerne Hacker Debtor *Pro Se*'s ("Debtor") case for several grounds. First, 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).

Second, 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).

Third, Trustee states Debtor has not provided him 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).

Fourth, Trustee asserts that the case may be dismissed automatically as a result of Debtor's failure to timely file documents. A continuance was granted, setting the deadline for filing necessary documents at September 5, 2018.

Lastly, Trustee notes an Order to Show Cause has been issued based on Debtor's failure to pay fees.

Debtor has not filed a response or opposition.

RULING

Debtor has delayed her case by failing to provide necessary documents, or to show up at the Meeting of Creditors as required. Furthermore, this court has tentatively granted an Order to Show Cause and dismissed the case for failure to pay fees the case. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

FINAL RULINGS

53. [13-31600](#)-E-13 **MICHAEL ELLIS** **MOTION TO DISMISS CASE**
[DPC-3](#) **Gerald Glazer** **8-8-18 [46]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal of Trustee’s Motion to Dismiss (Dckt. 50), 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.**

54. [18-20003](#)-E-13 **JAMES ZAMMIELLO** **MOTION TO DISMISS CASE**
[DPC-3](#) **Hank Walth** **7-19-18 [67]**

Final Ruling: No appearance at the September 5, 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 July 19, 2018. By the court’s calculation, 48 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 James Zammiello (“Debtor”) is \$5,496.00 delinquent in plan payments, which represents multiple months of the \$2,748.00 plan payment. Additional payments became due on July 25, 2018, and August 25, 2018 since the filing of Trustee’s Motion. 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 has not filed an Amended Plan since his first proposed plan was denied. Debtor offers no explanation for the delay in setting a plan for confirmation. That is also unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Debtor has missed several monthly payments and has not filed an Amended Plan since his first proposed plan was denied confirmation May 31, 2018. Dckt. 62. 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 September 5, 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Brandon and Celeste Herrera (“Debtor”) are \$4,844.01 delinquent in plan payments, which represents multiple months of the \$2,695.72 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 additionally that Debtor is in material default under the Plan because of the delinquency in payments, giving additional cause for dismissal. 11 U.S.C. § 1307(c)(6). Under Section 2.01 of the Plan, makes failure to make payments is a material breach. Dckt. 12.

RULING

Debtor is delinquent in payment and in material breach of his Plan terms. 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.

56. [14-28410](#)-E-13 KEVIN/SHANNON SECRIST MOTION TO DISMISS CASE
 [DPC-2](#) Michael Hays 8-6-18 [[54](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 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.**

57. [18-22116](#)-E-13 HORACE HODGES MOTION TO DISMISS CASE
 [DPC-2](#) Scott Shumaker 8-2-18 [[26](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 2018 hearing is required.

David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal (Dckt. 36), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the September 5, 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 a Supplemental Ex Parte Notice of Dismissal (Dckt. 223); 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 Mark Jon Hansen and Sarah Ann Monica Hansen (“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. 223, 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 September 5, 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 August 2, 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>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Rebecca Schlossarek (“Debtor”) is \$2,674.10 delinquent in plan payments. Debtor has not made any payments under her proposed plan. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). This is also a breach of the terms of the proposed plan Section 2.01. Dckt. 5; *See* 11 U.S.C. § 1307(c)(6).

Trustee asserts further that Debtor’s Schedules I and J indicate an inability to pay at present because of her lack of regular income, thus rendering Debtor ineligible for Chapter 13. 11 U.S.C. §§ 101(30), 109(e).

Debtor has not filed an opposition or response. 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.

59. [17-27933-E-13](#) **STEVE FLOYD AND NICOLE** **MOTION TO DISMISS CASE**
[DPC-1](#) **WILLIAMS** **8-8-18 [21]**
Eric Schwab

Final Ruling: No appearance at the September 5, 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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 Steve Floyd and Nicole Williams (“Debtor”) are \$6,036.65 delinquent in plan payments, which represents multiple months of the \$2,514.95 plan payment. Before the hearing, another plan payment will be due. Failure to

make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Failure to make payments is also a breach of the Plan term Section 2.01. 11 U.S.C. § 1307(c)(6).

RULING

Debtor has not filed an opposition or response explaining failure to make payments as required by the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

60.	<u>17-20736-E-13</u> <u>DPC-1</u>	MICHAEL/KIMBERLY MACHADO Mikalah Liviakis	MOTION TO DISMISS CASE 8-3-18 <u>[19]</u>
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Final Ruling: No appearance at the September 5, 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 a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 21, 2018, Dckt. 31; no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Michael and Kimberly Machado (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by David Cusick (“the Chapter 13 Trustee”) having been presented to the court, the Chapter 13 Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 31, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

61.	<u>17-24936-E-13</u> <u>DPC-2</u>	DANIEL ARANA Mark Shmorgon	MOTION TO DISMISS CASE 8-8-18 <u>[28]</u>
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Final Ruling: No appearance at the September 5, 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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 Daniel Arana (“Debtor”) is \$7,014.00 delinquent in plan payments, which represents multiple months of the \$2,338.00 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 additionally that Debtor is in material default under the Plan. Section 1.01 and 6.01 of the Plan (Dckt. 5) renders failure to make payments a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

RULING

Debtor has not filed an opposition or response explaining failure to proceed under her Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 September 5, 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 August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Roque Delarosa ("Debtor") is \$1,303.00 delinquent in plan payments, which represents multiple months of the \$576.00 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 further that Debtor is in material default under the Plan because Debtor is delinquent multiple months of payment. Section 1.01 of the Plan (Dckt. 5) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

RULING

Debtor has not filed an opposition or response explaining failure to proceed under her Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

63. [17-27338-E-13](#) **MARIETTA DECLARADOR** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Mohammad Mokarram** **8-8-18 [20]**

Final Ruling: No appearance at the September 5, 2018 hearing is required.

The Chapter 13 Trustee filed *ex parte* motion to dismiss the Motion to Dismiss this bankruptcy case without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041. Dckt. 28. The dismissal being consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee’s motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 28, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: Final Ruling: No appearance at the September 5, 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 August 3, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on September 12, 2018, (specially set) to afford Debtor’s counsel the opportunity to attend the hearing on this Motion.

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Robert Wood (“Debtor”) is \$3,840.00 delinquent in plan payments, which represents multiple months of the \$1,280.00 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 further that Debtor is in material default under the Plan because Debtor’s delinquency in payments. Section 1.01 of the Plan (Dckt. 13) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on August 20, 2018. Dckt. 31. Debtor asserts he fell behind on payments after missing a week of work, and proposes a payment schedule with cure payments August 8, August 24, August 31, and September 10 of 2018. Dckt. 32.

Debtor’s counsel, within Debtor’s Opposition, requests a continuance until September 10, 2018, for Debtor to become current and because counsel “will be on a returning flight at the exact time of this [September 5, 2018,] hearing.” Dckt. 31.

RULING

Debtor states he fell behind on payments because he “was very sick and had to take a week off of work and I did not have any paid vacation time.” Dckt. 32, ¶ 7. A review of Debtor’s Schedule I shows a monthly income of \$6,859.06, exclusive of his nonfiling spouse’s income. Schedule I, Dckt. 12. A week of Debtor’s monthly income should be approximately \$1,714.76. In fact, Debtor states further in his Declaration work is “ramping up” and he expects \$1,600.00 each week. Dckt. 32, ¶ 8. What is missing is how Debtor fell behind on *three* monthly payments after missing a weeks’ work.

Debtor elects not to provide a Modified Plan curing the delinquencies in payments. Rather, Debtor has told the court when he wants to pay under his plan and requests this court continue this Motion to fit his schedule. No explanation is provided to the court regarding where Debtor is receiving funds to cure all his delinquencies while continuing the impending plan payments. Debtor states he missed payments due to taking off a week, but it appears he suddenly conjured multiple weeks’ income when this Motion arose.

The court finds Debtor’s testimony is not credible. Debtor’s delay without explanation is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The court also questions whether this case, where Debtor and his nonfiling spouse are significantly above median income, is being pursued in good faith. *See* 11 U.S.C. § 1325(a)(7).

The hearing on the Motion to Dismiss is continued to 1:30 p.m. on September 12, 2018, (specially set) to afford Debtor's counsel the opportunity to attend the hearing on this Motion and explain the issues raised by the court.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 1:30 p.m. on September 12, 2018, (specially set) to afford Debtor's counsel the opportunity to attend the hearing on this Motion.

Final Ruling: No appearance at the September 5, 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 Debtors, Debtors' Attorney, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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 Jeffrey and Tami Diefenbach ("Debtor") are \$8,741.64 delinquent in plan payments, which represents multiple months of the \$2,910.82 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 is in material default under the Plan because of the Debtors' delinquency in payments. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 5. Failure to provide for those claims puts Debtors in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTORS' NONOPPOSITION

Debtors filed a Nonopposition on August 22, 2018. Dckt. 37.

RULING

Debtor is not proceeding under the terms of their Plan and do not oppose this 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.

66. [14-23652](#)-E-13 **PHILIP/YVETTE HOLDEN** **MOTION TO DISMISS CASE**
[DPC](#)-4 **Mary Ellen Terranella** **8-8-18 [157]**

Final Ruling: No appearance at the September 5, 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 a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 29, 2018, Dckt. 170; 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 Philip Sheridan Holden and Yvette Valerie Holden (“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. 170, 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.

67. [16-28154-E-13](#) **KEVIN BRIDGES** **MOTION TO DISMISS CASE**
 [DPC-3](#) **Mark Wolff** **8-8-18 [50]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 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.**

Final Ruling: No appearance at the September 5, 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 Debtors, Debtors' Attorney, and Office of the United States Trustee on July 19, 2018. By the court's calculation, 48 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 Mateo and Eva Galvan ("Debtor") are \$2,930.00 delinquent in plan payments, which represents one month of the \$2,930.00 plan payment. Before the hearing, a two additional payments will be due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed a response or opposition.

RULING

Debtor is not proceeding under the terms of the Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 September 5, 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 August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick ("the Chapter 13 Trustee") seeks dismissal of the case on the basis that Sharon Hickman ("Debtor") is \$1,206.00 delinquent in plan payments, which represents multiple months of the \$402.00 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 further that Debtor is in material default under the Plan because of her delinquency in payments. Section 1.01 of the Confirmed Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 5. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Debtor has not filed an opposition or response.

RULING

Debtor is not proceeding under the terms of her Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

70. [18-23462](#)-E-13 **SHARON JACKSON** **MOTION TO DISMISS CASE**
[DPC-3](#) **Marc Caraska** **8-6-18 [39]**

Final Ruling: No appearance at the September 5, 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.**

71. [18-23464](#)-E-13 **CYNTHIA PAYSINGER** **MOTION TO DISMISS CASE**
[DPC-2](#) **Peter Macaluso** **8-10-18 [48]**

Final Ruling: No appearance at the September 5, 2018, hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Dismissal, an Ex Parte Motion to Dismiss the pending Motion on August 30, 2018, Dckt. 72; 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 Cynthia J. Paysinger (“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. 72, 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.

72. [18-21865-E-13](#) **RONALD/JULIE EHMKE** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Bruce Dwiggins** **8-8-18 [23]**

Final Ruling: No appearance at the September 5, 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 Debtors, Debtors' Attorney, and Office of the United States Trustee on August 8, 2018. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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 Ronald and Julie Ehmke (“Debtor”) are \$2,745.00 delinquent in plan payments, which represents multiple months of the \$915.00 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 is in material default under the Plan because of the above referenced delinquency in payments. Section 2.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 8. Failure to provide for those claims puts Debtors in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

RULING

Debtor has not opposed this Motion, and is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

73. [14-30673](#)-E-13 **FERNANDO/SUSANA ORTIZ** **MOTION TO DISMISS CASE**
 [DPC-4](#) Steven Alpert 8-6-18 [[146](#)]

Final Ruling: No appearance at the September 5, 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 August 21, 2018, Dckt. 153; 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 Fernando and Susana Ortiz (“Debtors”); 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. 153, 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.

74. [17-26379-E-13](#) **ERIKA DAVIS** **MOTION TO DISMISS CASE**
 [DPC-1](#) **Peter Macaluso** **8-8-18 [47]**

Final Ruling: No appearance at the September 5, 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Erika Davis (“Debtor”) is \$300.00 delinquent in plan payments, which represents multiple months of the \$100.00 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 further that Debtor is in material default under the Plan because the above referenced delinquency. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 7. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Debtor has not filed an opposition or response.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 September 5, 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 Debtors, Debtors’ Attorney, and Office of the United States Trustee on August 3, 2018. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Lori and Joshua White (“Debtor”) are \$5,607.00 delinquent in plan payments, which represents multiple months of the \$2,177.00 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 is in material default under the Plan because the above referenced delinquency. Section 1.01 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Dckt. 15. Failure to provide for those claims puts Debtors in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Debtor has not filed an opposition or response.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

76. [17-27383-E-13](#) **BRIAN/HEATHER HENDRICKS** **MOTION TO DISMISS CASE**
[DPC-1](#) **Seth Hanson** **8-8-18 [23]**

Final Ruling: No appearance at the September 5, 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 Debtors, Debtors’ Attorney, and Office of the United States Trustee on August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Brian and Heather Hendricks (“Debtor”) are \$4,300.00 delinquent in plan payments, which represents multiple months of the \$2,150.00 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 is in material default under the Confirmed Plan because the above referenced delinquency. Section 1.01 of the Plan makes that failure a breach of the Plan

in addition to violating the Bankruptcy Code. Dckt. 5. Failure to provide for those claims puts Debtors in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

Debtor has not filed an opposition.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 September 5, 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 Debtors, Debtors' Attorney, and Office of the United States Trustee on July 18, 2018. By the court's calculation, 49 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 Daniel Martinez ("Debtor") is \$1,138.38 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Before the hearing, two additional plan payments will have become due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee further 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 June 26, 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).

Trustee requests the court dismiss this case unless Debtor files an Amended or Modified Plan, becomes current on payments, and files a response explaining his delay. Debtor has not filed any response, or Amended or Modified Plan.

RULING

Debtor is not proceeding under the terms of the proposed Plan and has not filed an Amended Plan since the previous plan's confirmation was denied. 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 September 5, 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 July 19, 2018. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Troy Shane Valdez Kaufman (“Debtor”) is \$2,558.28 delinquent in plan payments, which represents multiple months of the \$2,429.14 plan payment. Before the hearing, an additional plan payment will have become 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 further argues Debtor did not file a Plan or a Motion to Confirm a Plan following the court’s denial of confirmation to Debtors’ prior plan on June 26, 2018. Dckt. 25. A review of the docket shows that Debtors have not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

RULING

Debtor has not proceeded under the terms of the proposed plan and has not filed a Amended Plan since his proposed plan’s confirmation was denied. 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.

79. [14-29688-E-13](#) **MARVIN/DARYL GARDNER** **MOTION TO DISMISS CASE**
[DPC-5](#) **Steele Lanphier** **8-8-18 [\[98\]](#)**

Final Ruling: No appearance at the September 5, 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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 Marvin Keith Gardner and Daryl Ann Gardner (“Debtor”) is \$8,184.70 delinquent in plan payments (presuming Debtor has not been making mortgage payments directly), which represents multiple months of the \$2,046.19 plan payment. Before the hearing, an additional plan payment will become due. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee notes that the Plan provides for the Debtor's ongoing mortgage payment, and that Debtor could actually complete the Plan at 100% distribution to unsecured creditors by paying in \$5,350.00 as of August 2018. This payoff sum includes the ongoing mortgage payment to be made by Trustee for May, June, July, and August.

Trustee also adds a Modified Plan would be needed in the event Debtor has been making mortgage payments directly, desires to provide for 100% of unsecured claims (there being only one claim filed in this case in the amount of \$450.28 by DIRECTV, and Trustee already having \$285.68 on hand), or needs to make a lump sum payment of \$5350.00 inclusive of May, June, July, and August 2018 mortgage payments.

RULING

Debtor has not filed a response or opposition addressing Trustee's grounds for dismissal. Debtor's delinquency in plan payments is 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.

80. [18-20489-E-13](#) **DAVID SWEENEY AND STACY** **MOTION TO DISMISS CASE**
[DPC-1](#) **ADER-SWEENEY** **8-3-18 [30]**
August Bullock

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 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 a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 17, 2018 Dckt. 38; 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 David Eastman Sweeney; Stacy Dawn Ader-Sweeney (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. 38, 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.

81. [17-26791](#)-E-13 CAROLINA PENA MOTION TO DISMISS CASE
 [DPC-1](#) Matthew Gilbert 8-3-18 [[20](#)]

Final Ruling: No appearance at the September 5, 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.**

82. [13-29395](#)-E-13 FRANK/GRACE MURPHY MOTION TO DISMISS CASE
 [DPC-10](#) Paul Bains 8-6-18 [[130](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 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.**

83. [15-24997](#)-E-13 DAVID/AMY POST MOTION TO DISMISS CASE
 [DPC-3](#) Mary Ellen Terranella 8-6-18 [[121](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 5, 2018 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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David Cusick (“the Chapter 13 Trustee”) having filed a Notice of Withdrawal of Motion, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 21, 2018, Dckt. 127; 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 David Lawrence Post; Amy Michelle Post (“Debtors”); 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. 127, 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.

84. [18-23401](#)-E-13 PAUL/SHERI D'ANGELO
Mark Briden

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-19-18 [\[26\]](#)

Final Ruling: No appearance at the September 5, 2018 hearing is required.

Creditor Mark Jagusiak having dismissed his motion for relief of stay, the Order to Show Cause is discharged as moot.

Creditor Mark Jagusiak ("Creditor") having filed a "Withdrawal of Motion" July 5, 2018, (Dckt. 27), the court dismisses the Order to Show Cause RE Dismissal of Contested Matter or Imposition of Sanctions as Moot.

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

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

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

IT IS ORDERED that Creditor Mark Jagusiak having withdrawn his motion for relief of stay, the Order to Show Cause is discharged as moot.

85. [18-23420](#)-E-13 **HECTOR CAVAZOS**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-5-18 [\[30\]](#)

Final Ruling: No appearance at the September 5, 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 July 7, 2018. The court computes that 60 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 July 2, 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.

86. [18-24026-E-13](#) MICHELLE LUND
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-2-18 [15]**

Final Ruling: No appearance at the September 5, 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 August 4, 2018. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on July 30, 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.

87. [18-22041](#)-E-13 KRISTY NEAL
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-9-18 [61]**

Final Ruling: No appearance at the September 5, 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 July 11, 2018. The court computes that 56 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 July 5, 2018.

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

The court's docket reflects that the default in payment that is the 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.

88. [18-21538](#)-E-13 **RICHARD GARLINGHOUSE**
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-19-18 [\[44\]](#)

Final Ruling: No appearance at the July 5, 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 July 21, 2018. The court computes that 46 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$30.00 due on July 16, 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.

89. [18-24930](#)-E-13 **JOSEPH BOCHNER**
[RPH-1](#) Pro Se

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY**
8-7-18 [\[10\]](#)

RONALD KOEPP VS.

Final Ruling: No appearance at the September 5, 2018 Hearing is required.

**The hearing on the Motion For Relief From the Stay has been continued to
xxxxxxx, 2018, pursuant to prior order of the court (Dckt. Xxxxxx).**

90. [18-23459](#)-E-13 **JOHN CASTORINA**
 Justin Kuney

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-6-18 [\[30\]](#)

DEBTOR DISMISSED: 08/17/18

Final Ruling: No appearance at the September 5, 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 August 8, 2018. The court computes that 28 days' notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on August 17, 2018 (Dckt. 37), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

91. [18-23459](#)-E-13 **JOHN CASTORINA**
 Justin Kuney

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-6-18 [[24](#)]

DEBTOR DISMISSED: 08/17/18

Final Ruling: No appearance at the September 5, 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 July 8, 2018. The court computes that 59 days' notice has been provided.

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

<p>The Order to Show Cause is discharged as moot.</p>
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The court having dismissed this bankruptcy case by prior order filed on August 17, 2018 (Dckt. 37), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

JOHN CASTORINA
Justin Kuney

MOTION TO DISMISS CASE
8-15-18 [32]

DEBTOR DISMISSED: 08/17/2018

Final Ruling: No appearance at the September 5, 2018, hearing is required.

The Motion to Dismiss is dismissed as moot.

The court having dismissed this bankruptcy case by prior order filed on August 17, 2018 (Dckt. 37), the Motion to Dismiss is dismissed as moot.

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

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

The Motion to Dismiss having 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 dismissed as moot.

SHARON JACKSON
Marc Caraska

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-6-18 [30]

Final Ruling: No appearance at the September 5, 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 July 8, 2018. The court computes that 59 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on July 2, 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.

94.	<u>18-23867</u> -E-13	FIAZ JAVED Robert McCann	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-25-18 <u>[31]</u>
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Final Ruling: No appearance at the September 5, 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 July 27, 2018. The court computes that 40 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 July 20, 2018.

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

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

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

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

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

95. [18-22178](#)-E-13 BLAIRE KNIGHT ORDER TO SHOW CAUSE - FAILURE
Muoi Chea TO PAY FEES
7-16-18 [\[48\]](#)

Final Ruling: No appearance at the September 5, 2015 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 August 8, 2018. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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David Cusick (“the Chapter 13 Trustee”) seeks dismissal of the case on the basis that Kenneth George Jefferson and Brianne Antonette Jefferson (“Debtor”) is \$8,448.12 delinquent in plan payments, which represents multiple months of the \$2,816.37 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 further that Debtor is in material default under the Confirmed plan because Debtor is delinquent in payments. Section 1.01 of the Confirmed Plan (Dckt. 5) makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. *See* 11 U.S.C. § 1307(c).

Debtor has not filed a response or opposition to Trustee’s Motion.

RULING

Debtor is not proceeding under the terms of the Confirmed Plan. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.