

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

**Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California**

September 25, 2019 at 10:00 a.m.

1.	<u>19-24783</u>-E-13	DENISE WATSON Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-3-19 [19]
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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 (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on September 5, 2019. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on August 29, 2019.

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.

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 16, 2019. 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 August 9, 2019.

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

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

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

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

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

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

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

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 8, 2019. The court computes that 17 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 September 3, 2019.

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.

Final Ruling: No appearance at the September 25, 2019 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 September 11, 2019. 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: \$31.00 due on September 3, 2019.

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.

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, and Office of the United States Trustee on July 17, 2019. By the court's calculation, 70 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, DeAndra Renee Jackson ("Debtor"), has not filed a motion setting a hearing for confirmation of the Amended Plan.
2. Debtor is \$330.00 delinquent under the Amended Plan.
3. Debtor has not provided several of the 11 U.S.C. § 521 documents.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed his Declaration in support of the Motion. Dckt. 32.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 14, 2019. Dckt. 40. Debtor's counsel reports that she is in the process of securing documentation to file an amended plan which would resolve the Motion. Debtor's counsel states further she substituted into this case August 12, 2019, and therefore requests the hearing on this Motion be continued to allow her time to secure documentation.

AUGUST 21, 2019 HEARING

At the August 21, 2019 hearing the court continued the hearing to allow additional time to Debtor to gather documents and prosecute the case. Civil Minutes, Dckt. 44.

DISCUSSION

Nothing has been filed since the prior hearing. Despite the additional time afforded, no Amended Plan has been filed and served and set for confirmation hearing.

Debtor is not prosecuting this case. That is delay that is prejudicial to creditors, and cause to dismiss this case. 11 U.S.C. § 1307(c).

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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 23, 2019. 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.~~

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Ivaldo Christopher Lenci ("Debtor"), is delinquent because the Order Confirming Plan specified Debtor shall pay a lump sum of \$75,000.00 from the sale of his residence

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 3, 2019. Dckt. 25. Debtor states the sale was delayed due to extreme medical conditions Debtor experienced over the last year. Debtor states a modified plan will be filed.

HUD'S RESPONSE

Creditor United States Department of Housing and Urban Development ("HUD") filed a Response on September 11, 2019. HUD argues that its entire claim became due because Debtor's grandfather, the original borrower, passed away, triggering a maturity event. HUD argues that no plan would be feasible here, Debtor has not made payments under the Confirmed Plan, HUD is advancing costs for taxes and insurance on the property, and Debtor is not marketing the property.

DISCUSSION

Debtor filed a Modified Plan and Motion to Confirm on September 11, 2019. Dckts. 32, 35. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckt. 34. The Modified Plan proposes giving Debtor an additional 6 months to market and sell the debtor's property.

Debtor's Opposition explained that Debtor was unable to market the property due to his serious illness. Debtor has not argued that his health issues were temporary, or that they have cleared up. Taking the Debtor at his word, this shows that the proposed plan—and any proposed plan—is not feasible because Debtor is not capable of marketing the property himself.

Debtor's plan is essentially to keep creditors corralled and eventually (maybe months, maybe years) down the road the property will be sold to pay their claims. That is unreasonable delay. 11 U.S.C. § 1307(c).

Debtor commenced this case on June 18, 2018. On Schedule A/B Debtor lists the 49th Street Property as having a value of \$588,000. Dckt. 9 at 3. The secured claims listed on Schedule D total slightly less than (\$400,000), leaving Debtor with a substantial equity (exempt and non-exempt). *Id.* at 12-13. The HUD claim is listed as a reverse mortgage. Debtor's "plan" in this case has been to have a plan to sell the real property and pay all claims in full within one-year, while making monthly payments of \$500 a month as his projected disposable income. Plan, Dckt. 11.

Debtor's response has been to file a modified plan which would now require the lump sum payment, stated to be \$75,000.00 to be made by the eighteenth month of the Plan. Dckt. 35. The case having been filed in June 2018 and the original Plan having begun in July 2018, the eighteen month of the Plan as modified would be December 2019.

The court cannot identify any motion requesting the employment of a Realtor to market the property and recover the fair value for the estate creditors, and Debtor. Thus, it appears that this Debtor, sidelined by serious medical issues is going to hire a Realtor, have the Realtor market the Property, then engaged in prudent negotiations over a sales price, enter into a contract, have the buyer arrange financing, complete the inspections, make all necessary repairs, and close escrow by December 31, 2019 – Notwithstanding the marathon Thanksgiving -Hanukkah-Christmas Holiday Season.

At the hearing, Debtor's counsel addressed what other measures for the prompt, commercially reasonable sale of the property could be utilized by the Debtor. These included:

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The Motion is ~~granted~~.

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

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

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

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

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 29, 2019. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Randy Lee Turner ("Debtor"), is delinquent \$7,473.98 in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 11, 2019. Dckt. 93. Debtor's Opposition and supporting pleadings argue that Debtor's 2018 tax refund was not received. Dckts. 94, 96, 97.

DISCUSSION

Debtor is \$7,473.98 delinquent in plan payments, which represents multiple months of the \$2,280.00 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).

Debtor's only argument in opposition is that he anticipated tax refunds and did not receive them. This argument is not compelling, because the Order Confirming the Plan required any refunds to be paid into the plan—in addition to the plan payment amounts. Debtor offers no explanation as to why the default occurred, why it would not occur again, where the unpaid monies have been disbursed, and where the extra monies can be found.

Based on the foregoing, no cause exists to dismiss this case. The Motion is denied, and the case is not dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“Trustee”), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and no good cause appearing,

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

8. [15-28525-E-13](#) **CORNELL/BARBARA TINDALL** **MOTION TO DISMISS CASE**
[DPC-3](#) **Nicholas Lazzarini** **8-19-19 [67]**

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 19, 2019. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that the debtors, Cornell Tindall and Barbara Zamora Tindall (“Debtors”), are delinquent \$4,821.03 in plan payments.

DEBTORS’ OPPOSITION

Debtors filed an Opposition on September 11, 2019. Dckt. 71. Debtor states the delinquency will be cured or modified plan filed prior to the hearing date.

DISCUSSION

Debtor is \$4,821.03 delinquent in plan payments, which represents multiple months of the \$1,609.34 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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 19, 2019. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, John Chris Hatzis ("Debtor"), is delinquent \$7,560.54 in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on September 11, 2019. Dckt. 24. Debtor intends to cure the delinquency prior to the hearing.

DISCUSSION

Debtor is \$7,560.54 delinquent in plan payments, which represents multiple months of the \$3,770.18 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

10. [18-23227-E-13](#) **KIMBERLI HECK AND DAVID** **MOTION TO DISMISS CASE**
[DPC-2](#) **HECK, JR.** **8-19-19 [60]**
 Pauldeep Bains

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

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, Debtor's Attorney, and Office of the United States Trustee on August 19, 2019. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtors, Kimberli Beth Heck and David Keith Heck, Jr ("Debtors"), are delinquent \$11,870.00 in plan payments.

DEBTOR'S RESPONSE

Debtors filed a Response on September 10, 2019. Dckt.64. Debtor states the delinquency will be cured or modified plan filed prior to the hearing date.

DISCUSSION

Debtors are \$11,870.00 delinquent in plan payments, which represents multiple months of the \$5,879.10 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).

Unfortunately for Debtor, a promise to pay is not evidence that resolves the Motion.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case

is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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.

11.	<u>19-23160-E-13</u> <u>DPC-1</u>	SHIRLEAN MOORE-JORDAN & KENNETH JORDAN Pro Se	CONTINUED MOTION TO DISMISS CASE 7-17-19 [30]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 17, 2019. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

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

The Motion is granted.

The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtors, Shirlean Sparkle Moore-Jordan and Kenneth Bernard Jordan (“Debtor”), have not commenced plan payments.

2. Debtor did not appear at the July 11, 2019 Meeting of Creditors.
3. Debtor has not provided a copy of Debtor's most recent tax return.
4. Debtor filed Debtor's Chapter 13 Plan using the wrong plan form.
5. Debtor's Chapter 13 Plan has not been served on parties in interest.

DEBTOR'S REQUEST FOR CONTINUANCE

Debtor filed a Statement requesting a 30 day continuance on August 8, 2019. Debtor states that after the death of her husband she was injured in an auto accident. Debtor states further her son attended the first meeting of creditors and was advised to seek counsel. Debtor has since contacted several attorneys and will have counsel by the next scheduled date.

AUGUST 21, 2019 HEARING

At the hearing the court continued the hearing on the Motion based on Debtor's representation she was seeking counsel. Civil Minutes, Dckt. 36.

DISCUSSION

Despite the additional time afforded, Debtor has not obtained counsel. After a hearing on September 10, 2019, the court sustained the creditor SAFE Credit Union's Objection to Confirmation. No Amended Plan has been filed and served and set for confirmation hearing.

Debtor is not prosecuting this case. That is delay that is prejudicial to creditors. 11 U.S.C. § 1307(c).

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

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

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

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

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 August 21, 2019. . By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that:

1. the debtor, Howard James Redmond, Sr. ("Debtor"), is not the actual person signing the petition and other documents; the person signing documents is "Kaila Cynthia Redmond, Heir Apparent."
2. The proposed plan calls for payments of \$0.00 and lists no creditors. Debtor's Schedules list no income and only list Wells Fargo Bank, N.A. as a the sole creditor.

DISCUSSION

The present case was filed by Kaila Cynthia Redmond allegedly on behalf of Debtor. However, it is not the Debtor who signs the petition and filing documents—it is Redmond. Even assuming that Redmond somehow had authority to file the petition on behalf of the Debtor (though no basis has been shown), the schedules are clearly incomplete and the plan proposed on its face is not feasible.

Adversary Proceeding

In addition to this Bankruptcy Case, Kai'la Redmond, a living woman, filed an adversary proceeding as the Family of Redmond as Heir apparent for Howard James Redmond, Sr. Adv. 19-2111. The allegations and relief sought in the Adversary Proceeding are summarized as follows:

- A. The action seeks to “avoid and recover preferential transactions under 11 U.S.C. § 547(a) (b).” 19-2111; Complaint ¶ 1, Dckt. 1.
- B. American Brokers Conduit (“ABC”) is alleged to have drawn on a “Warehouse Line of Credit of Fund Loan.” *Id.*
- C. The alleged loan was then sent by an “extension of credit application” to be collateral for an “Equity Line of Credit.” *Id.*
- D. Plaintiff Kai'la Redmond then alleges that it was her “loan” that was sold. *Id.*
- E. The Department of Treasury is the “real party in interest” and the court lacks subject matter jurisdiction and the “case” “lacks ratification of Commencement.” *Id.*
- F. The court has jurisdiction over this Adversary Proceeding. *Id.*, ¶ 2.
- G. Debtor made payments of (\$230,000) to ABC. *Id.* ¶ 9.
- H. The State Courts are not Constitutional Courts established under the California Constitution, but is a private owned Commercial Investment Business Entity/company. *Id.* ¶ 11.
- I. The above non-Constitutional Court engages in human trafficking and money laundering. *Id.*
- J. If there is a sale under a “judgment order” then “it will be placed into the state JUDGES RETIREMENT FUND under the CRIS (COURT REGISTRY INVESTMENT SYSTEM).” *Id.*
- K. “Before nay State or Federal Court can proceed judicially, jurisdiction must be complete - consisting of two opposing parties (not their alleged Attorneys STOEL RIVES, LLP, Counsel for Plaintiff in the said State “court,” *Id.* ¶ 12.
- L. ABC’s right of payment has been waived by the “Impairment of Collateral and Recourse by Restrictive Endorsements.” *Id.* ¶ 13.
- M. ABC’s State Court complaint is based by the California Statute of Limitations and the Statute of Frauds. *Id.* ¶ 15.
- N. ABC’s claim violates Public Policy as stated in 31 U.S.C. § 5118(d)(2), governing “Gold clauses and consent to sue.” *Id.* ¶ 16. The highlighted portion states that an obligation issued containing a gold clause is discharged by payment in United States

coin or currency. Further, that this paragraph does not apply to an obligation issued after October 27, 1977.

- O. Warehouse lines of credit as the basis for asserted loan obligation are based on fraudulent conveyances. *Id.* ¶ 18.
- P. It is asserted that due to Defendants, there is a lack of standing issue which the Bankruptcy Court must address. Plaintiff cites to Article VI, §§ 1, 7 and 9, and Article 3, § 2 of the Constitution. *Id.* ¶ 20.
- Q. The defendants in ABC's state court action never made a general appearance, nor filed an answer or response, rendering the State Court judgment void. *Id.* ¶ 22.
- R. ABC does not have a security interest, and if so, it is not perfected. *Id.* ¶ 24.
- S. ABC is not a holder in due course. *Id.* ¶ 25.
- T. ABC is holding investment contract proceeds due Plaintiff and a constructive trust should be imposed. *Id.* ¶ 26.
- U. ABC's attorneys are unregistered agents of a foreign principal. *Id.* ¶ 27. ABC and its attorneys are barred from submitting any claim in the bankruptcy court. *Id.* ¶ 28.
- V. The Law of Merchant of William Murray, 1st Earl of Mansfield (1705-1793) supplements the Ohio Uniform Commercial Code. *Id.* ¶ 31.
- W. Payments based on an antecedent debt were made within 90 days of the commencement of the bankruptcy case which constitute a statutory preference. *Id.* ¶¶ 32-35.
- X. A Birth Certificate BankNote was deposited with the United States Treasury for future labor interest value. *Id.* ¶ 43.

Attached as an exhibit to the Complaint is a copy of a complaint filed in the District Court for the Eastern District of California by Hakeim El Bey. E.D. Cal. No. 17-CV-2237. In the District Court Action a Howard James Redmond Bey, as the executor of the estate of Hakeim El Bey Family Trustee filed a motion to substitute in the place of Hakeim El Bey. 17-CV-2237, Dckt. 38. Hakeim El Bey is identified as Howard James Redmond Bey's father. The District Court Action was dismissed without prejudice due to the failure of Howard James Redmond Bey, appearing in a representative capacity, failing to obtain counsel as required by law and ordered by the court.

Dismissal of Bankruptcy Case

As a self-identified heir apparent, Howard James Redmond, Sr., also known as Hakeim El Bey, (Petition, Dckt. 1 at 1) is deceased and there exists an estate that is or must be the subject to probate. Such estate of a decedent cannot be a bankruptcy debtor. See 11 U.S.C. § 109(e), which defines who may be a debtor in a Chapter 13 case:

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,184,200 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$419,275 and noncontingent, liquidated, secured debts of less than \$1,184,200 may be a debtor under chapter 13 of this title.

An individual does not include the estate of a decedent. The term individual is (circularly defined) to be:

30) The term "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

11 U.S.C. § 101(30). The term "individual" is included in the definition who and what constitutes a "person." 11 U.S.C. § 101(40). It has been uniformly held that an "individual" is a living "person" who has income, not the estate of a deceased person. 2 COLLIER ON BANKRUPTCY, ¶ 101.41; *In re Goerg*, 844 F.2d 1562, 1563 (11th Cir. 1988).

Further on the Statement of Current Monthly Income, it is stated that Howard James Redmond, Sr. had no income in the six month period prior to the commencement of this case. Dckt. 1 at 9. On Schedule I it is stated that Howard James Redmond, Sr. has no current income. *Id.* at 43-44. However, on Schedule J it is stated that Howard James Redmond, Sr. has a monthly mortgage expense of \$1,422, heat/electricity of \$60, and water/sewage of \$50, but no other expenses - including nothing for food, clothing, personal care, transportation, or entertainment. *Id.* at 45-46.

The "plan" stated in the Chapter 13 Plan is for there to be \$0 in monthly plan payments. Dckt. 11. No creditors are to be paid, with the Plan stating that each of the creditor payment provisions is "Not Applicable."

Kaila (spelled differently in different parts of the pleadings) Cynthia Redmond, Heir-Apparent has not responded to the Motion. This case is not being prosecuted as permitted under the Bankruptcy Code. It appears, based on the statements by Kaila Cynthia Redmond, Heir-Apparent, that a Chapter 13 Plan cannot be filed "by" Howard James Redmond, Sr.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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

13.	<u>19-23796</u> -E-13	SHARON LOCKETT Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-19-19 <u>[29]</u>
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Final Ruling: No appearance at the September 25, 2019 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 21, 2019. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on August 13, 2019.

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

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

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 19, 2019. 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 the case on the basis that the debtor, Stacy Lynn Tucker ("Debtor"), is delinquent \$3,474.00 in plan payments.

DISCUSSION

Debtor is \$3,474.00 delinquent in plan payments, which represents multiple months of the \$1,737.00 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13

Trustee, David Cusick (“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 25, 2019 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 21, 2019. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on August 13, 2019.

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

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

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 29, 2019. By the court’s calculation, 58 days’ notice was provided. 28 days’ notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), seeks dismissal of the case on the basis that:

1. the debtor, Ozniesha Clara Williams (“Debtor”), did not turnover any tax refunds, and did not show documentation to demonstrate there was no refund.
2. Debtor is delinquent \$4,562.71 in plan payments.

DISCUSSION

Debtor is \$4,562.71 delinquent in plan payments, which represents slightly more than one month of the \$4,096.56 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).

Additionally, Debtor has not provided his expected tax refund or documentation showing no refund was received. The Order Confirming Plan required Debtor to turnover all tax refunds in excess of

\$2,000.00.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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 25, 2019 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 19, 2019. 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.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the debtor, Tre Wilbur Ball ("Debtor"), is delinquent \$3,635.70 in plan payments.

DISCUSSION

Debtor is \$3,635.70 delinquent in plan payments, which represents multiple months of the \$1,319.14 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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. [19-20924-E-13](#) **KEVIN KENNEDY** **MOTION TO DISMISS CASE**
[DPC-1](#) **Mikalah Liviakis** **8-19-19 [22]**

Final Ruling: No appearance at the September 25, 2019 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on September 25, 2019 (Dckt. 29); 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 Kevin Anton Kennedy (“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 filed by “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. 29, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [18-20826-E-13](#) **CHRISTOPHER MORELAND &** **MOTION TO DISMISS CASE**
[DPC-2](#) **CHERYL DAY-MORELAND** **8-27-19 [30]**
 Mohammad Mokarram

Final Ruling: No appearance at the September 25, 2019 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 was dismissed without prejudice, and the matter is removed from the calendar.**

20. [19-22037-E-13](#) **PETE GARCIA** **MOTION TO DISMISS CASE**
[DPC-4](#) **Peter Macaluso** **8-28-19 [66]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 25, 2019 hearing is required.

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

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on September 25, 2019. Dckt. 66; 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 Pete A. Garcia (“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 filed by “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. 79), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the September 25, 2019 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 29, 2019. 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: \$70.00 due on August 22, 2019.

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

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

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 19, 2019. 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 the case on the basis that the debtors, Manuel Saucedo-Gonzalez and Regina Saucedo (“Debtors”), are delinquent \$14,085.10 in plan payments.

DISCUSSION

Debtors are \$14,085.10 delinquent in plan payments, which represents multiple months of the \$3,275.35 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).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick (“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.	<u>19-24838</u> -E-13	TERESA/STEVEN GONSALVES Ted Greene	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 9-5-19 [17]
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Final Ruling: No appearance at the September 25, 2019 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtors, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on September 7, 2019. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$79.00 due on September 3, 2019.

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

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

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 29, 2019. By the court's calculation, 58 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 the case on the basis that the debtor, Angela Alfaro ("Debtor"), did not pay the expected 2018 tax refund into the plan, and did not provide documentation showing there was no tax refund.

DISCUSSION

The Order Confirming Plan issued December 19, 2016 required Debtor to pay all tax refunds in excess of \$2,000.00 into the plan. Dckt. 22. Debtor has not paid any refund or shown evidence there was no refund. That is unreasonable delay. 11 U.S.C. § 1307(c)(1).

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13

Trustee, David Cusick (“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. [16-24147-E-13](#)
[DPC-3](#)

KATHLEEN MCKELVIE
Peter Macaluso

**CONTINUED MOTION TO DISMISS
CASE
7-10-19 [59]**

Final Ruling: No appearance at the September 25, 2019 hearing is required.

The Motion to Dismiss is dismissed without prejudice.
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David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on September 11, 2019. Dckt. 67; 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 Kathleen A Mckelvie (“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 filed by “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. 67, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the September 25, 2019 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 was dismissed without prejudice, and the matter is removed from the calendar.**

Final Ruling: No appearance at the September 25, 2019 hearing is required.

The Motion to Dismiss is dismissed without prejudice.

David Cusick (“the Chapter 13 Trustee”) having filed an Ex Parte Motion to Dismiss the pending Motion on September 11, 2019 (Dckt. 101); no prejudice to the responding party appearing by the dismissal of the Motion; the Chapter 13 Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Mario Manuel Borrego and Christine Joy Borrego (“Debtor”); the Ex Parte Motion is granted, the Chapter 13 Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 15, 2019. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$70.00 due on August 6, 2019.

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

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

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 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 28, 2019. 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 denied without prejudice as moot.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks to dismiss Mark Williams Evans and Renee Evans's ("Debtor") Chapter 13 case. Debtor filed a Notice of Conversion on September 19, 2019, however, converting the case to a proceeding under Chapter 7. Dckt. 94. Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. FED. R. BANKR. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 19, 2019. *McFadden*, 37 B.R. at 521.

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

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

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

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

Final Ruling: No appearance at the September 25, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 27, 2019. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion to Dismiss is continued to November 5, 2019.

The Chapter 13 Trustee, David Cusick ("Trustee"), seeks dismissal of the case on the basis that the proposed plan filed by debtors, Carlos Barajas and Claudia Barajas ("Debtors"), will complete in 98 months due to unsecured claims being \$59,278.38 greater than scheduled.

The Trustee notes Proof of Claim, No. 20, asserting a claim of \$79,558.71 was filed on September 20, 2018, after the bar date but has not been objected to.

DEBTOR'S RESPONSE

Debtor filed a Response on September 11, 2019. Dckt. 47. Debtor states Debtor will file an objection to claim no. 20.

DISCUSSION

The Debtor filed an Objection To Claim on September 19, 2019. Dckt. 49. The court shall continue the hearing on this Motion to November 5, 2019, to be heard alongside the Debtor's Objection.

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

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

The Motion to Dismiss the Chapter 13 case filed by The Chapter 13 Trustee, David Cusick ("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 November 5, 2019.