

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 20, 2016 at 10:00 a.m.

1. [15-24500-E-13](#) RAMONA/ROBERT JONES CONTINUED MOTION TO DISMISS
DPC-4 Pro Se CASE
10-7-15 [[72](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 7, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, asserts that the 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, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3).

Ramona Jones and Robert Jones, Jr. ("Debtor") filed a responsive declaration on October 19, 2015. Dckt. 76. Debtor asserts that a Motion to Confirm was filed October 15, 2015. The reason for the delay is that Debtor Ramona Jones' sister passed away 1 month ago, and Debtor Ramona Jones was "heavily medicated and unable to work."

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Trustee filed a response on October 21, 2015. Dckt. 80. Trustee asserts two grounds for rejecting the filed Motion to Confirm and granting Trustee's Motion to Dismiss. First, the Motion to Confirm the Plan is defective in the following ways:

- A. There is no Notice of Hearing filed;
- B. There is no hearing date indicated, and no docket control number;
- C. There is no Declaration in Support of the Motion to Confirm;
- D. There is no Proof of Service of the Motion or Plan in the Court record.

In addition, Trustee asserts that the unconfirmed August 13, 2015 Plan is faulty as to:

- A. § 2.08 understates the mortgage arrears as \$15,517.67, as opposed to the Creditors Proof of Claim #4-1 indicates arrears of \$18,232.63;
- B. § 2.08 also fails to list the monthly dividend to be paid to the mortgage arrears, as the Arrearage Dividend is blank;
- C. § 2.15 does not provide a value for the total unsecured debt and the percentage to pay to unsecured creditors, despite the California Franchise Tax Board's Proof of Claim #3-1 for \$28,997.02 (\$26,028.96 is general unsecured, \$2968.06 is priority);
- D. The Amended Plan has not been served on all parties.

Dckt. 80, 81 ¶ 2, 3.

REVIEW OF CASE AND PRIOR FILINGS

Debtor filed a prior Chapter 7 Case in 2012 in this District - Case No. 12-32011. Debtor received a discharge in that case on November 19, 2012.

The current case was commenced on June 2, 2015. The Schedules and Statement of Financial Affairs were filed on June 15, 2015. Dckt. 15. On Schedule A Debtor lists owning one piece of real property, the 756 Newport Way Property. Debtor states that the encumbrances against the property equal its value. *Id.* at 3. Schedule B lists personal property assets totaling \$12,000.00 (of which \$4,500 is for Debtor's two vehicles, \$4,500 is for household goods, and \$1,000 for books and pictures). *Id.* at 4-6.

On Schedule D, Debtor lists "Owen Loan Servicing" as having a claim of (\$365,921.75), the non-described collateral to have a value of \$206,000, and the unsecured portion of the creditor's claim to be (\$365,921.75). *Id.* at 8. Debtor lists no priority unsecured claims on Schedule E and no general unsecured claims on Schedule F. *Id.* at 9 and 11.

On Schedule I Debtor lists having gross monthly income of \$5,100.00 (combined of the two debtors). After withholding and including military disability pay, Debtor reports having \$4,273.00 in Monthly Income. *Id.* at 15.

On Amended Schedule J Debtor lists having (\$1,912.00) in monthly expenses. These include the following:

- A. Home Maintenance.....(\$ 100.00)
- B. Utilities.....(\$ 259.00)
- C. Phone/Cable.....(\$ 200.00)
- D. Food and Housekeeping (2 adults).....(\$ 300.00)
- E. Clothing/Laundry.....(\$ 45.00)
- F. Personal Care Products.....(none stated)
- G. Medical/Dental.....(none stated)
- H. Transportation (2 vehicles).....(\$ 100.00)
- I. Entertainment.....(none stated)
- J. Life Insurance.....(none stated)
- K. Health Insurance.....(none stated)
- L. Vehicle Insurance.....(none stated).

Dckt. 55 at 6-7. By Debtor's calculation, there is \$3,269.99 in Monthly Net Income to fund a plan.

As disclosed on Schedule I and the Statement of Financial Affairs, each of the Debtors in this case were able to recently obtain employment.

With respect to the expenses stated on Schedule J, they do not appear to be realistic or reasonable. Here, assuming \$50 a month for housekeeping expenses, each debtor would have \$125 a month for food, which works out to \$1.34 per meal. For two vehicles, Debtor provides \$50 a month for fuel, maintenance, and registration. There is no expense for insurance for the two vehicles.

Review of Plan

The Amended Chapter 13 Plan was filed on August 13, 2015. The terms of the Plan provide:

- A. Monthly Plan Payment, 60 Months.....\$1,192.97
- B. Ocwen, \$15,517.67 Arrearage.....(none provided)
- C. Ocwen, Current Monthly.....(\$ 908.99)

Dckt. 43.

The Amended Plan fails to provide for the curing of the arrearage on the "Ocwen Loan Servicing" claim. The court notes that Ocwen Loan Servicing,

LLC is a loan servicing company and generally not the creditor who is asserting the claim in the bankruptcy case.

Claims Filed

Several claims have been filed in this case. Proof of Claim No. 1 has been filed for Cascade Capital LLC Series B in the amount of \$315.00 as an unsecured claim. This date appears to pre-date July 2012 and may be subject to the prior discharge. No supporting documents for the claim are attached to Proof of Claim No. 1.

Proof of Claim No. 2 has been filed by the California Franchise Tax Board. The claim is filed for a \$2,968.06 priority claim and a \$26,028.96 general unsecured claim. The Attachment to Proof of Claim No. 2 identifies the claim to be for the 2004-2011 tax years, and for the 2012-2014 tax years, with the asserted tax for this later period to be the priority claim of \$2,968.06 and unsecured claim for \$742.00 (with the 2014 tax year "TBD.").

Proof of Claim No. 4 has been filed for U.S. Bank, N.A., as Trustee, by Ocwen Loan Servicing, LLC (as the loan servicer). The Claim asserts that there is: (1) an \$18,232.63 pre-petition arrearage; (2) \$279,000 secured claim; and (3) \$89,360.45 unsecured claim.

Motion to Confirm and Supporting Pleadings

On October 19, 2015, Debtor filed a pleading titled "Motion to Confirm Chapter 13 Plan. Dckt. 78. The Motion fails to state with particularity the grounds upon which relief is requested. Fed. R. Bankr. P. 9013. Even giving the "Motion" a very liberal, pro se lenient eye, the "Motion" states little more than a bankruptcy case was filed, a plan filed, and confirm the plan. No certificate of service has been filed for the Motion.

No declaration or other evidence is filed to support confirmation. Debtor has filed a notice of hearing. Dckt. 84. The certificate of service for the Notice states that it has only been served on the Chapter 13 Trustee and Brian Tran, as the attorney for Ocwen Loan Servicing, LLC. The Notice (as well as the Plan and Motion) have not been served on U.S. Bank, N.A., as Trustee, (a federally insured financial institution) and the State of California Franchise Tax Board.

NOVEMBER 4, 2015 HEARING

At the hearing the court addressed with Debtor the ability of Debtor to seek out and obtain counsel so that this case, and a possible plan, could be reasonably and feasibly prosecuted. Dckt. 91. The court continued the hearing to allow the Debtors to seek counsel to represent Debtor in this case.

DISCUSSION

The present Plan fails to properly provide for the claims in this case - both the secured claim of U.S. Bank, N.A., the priority claim and general unsecured claim of the California Franchise Tax Board. On the one hand, it would appear that Debtor is not able to feasibly prosecute a Chapter 13 Plan in this case. The court denied confirmation of the plan on December 15, 2015. Dckt. 97.

Since the denial of the plan, there has been no attorney entered as representing the Debtor nor has another plan been filed in light of the previous one being denied.

Looking below the surface, it may well be that Debtor, having been unemployed, fell behind on the mortgage payments. Both of the debtors now have jobs and are earning a good monthly income. They may be able to payment their current expenses and cure the arrearage, as well as provide for the priority tax claim. Further, it appears that U.S. Bank, N.A., as Trustee, values the Property securing its claim to be only \$279,000.00. Proof of Claim No. 4. Debtor may not want to try and cure the arrearage, but let the Property go and start anew.

It does appear to the court that whatever Debtor should decide to do, prosecuting this case in *pro se* does not appear to be feasible. If the only debts are the secured claim and priority claim, a possible financial scenario could be:

	Estimated Monthly Creditor/Administrative Expense Payment
Cure of \$18,232.63 Secured Claim Arrearage Over 60 Months	(\$304)
Current Monthly Secured Claim Payment	(\$909)
\$2,869.00 Priority Claim Over 60 Months 1261	(\$48)
Chapter 13 Trustee Administrative Expense - 8% of Plan Payment	(\$101)
Debtor Chapter 13 Attorney Fee Administrative Expense of \$3,500 in Fees Paid Through Plan Averaged Over 60 Months	(\$59)
<i>Guesstimated</i> Plan Payment For Above Claims and Expenses	\$1,421

As set forth on Amended Schedule J, Debtor reports having Monthly Income (after withholdings) of \$4,273.00. If there are (\$1,421.00) in monthly plan payments for secured (current and cure) and priority claims, then there would be \$2,852 for current reasonable monthly expenses and any additional plan amounts which would be required.

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

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

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

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

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

2. 15-23902-E-13 JOHN/MELISSA RUS MOTION TO DISMISS CASE
DPC-2 Cindy Lee Hill 12-11-15 [64]

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 - Opposition Filed.

Correct 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 December 11, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 11, 2015. Dckt. 64. The Trustee seeks dismissal due to the Debtor's delinquency.

John and Melissa Rus ("Debtor") filed an opposition on January 6, 2016. Dckt. 68. The Debtor state that she believed they were current and attach receipts for the months of June, July, September, October, and November 2015. However, the Debtor states that she is unable to find any evidence of the August payment nor the third stub for the September payment.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,883.00 delinquent in plan payments, which represents multiple months of

the \$2,711.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor's declaration supports the Trustee's ground that the Debtor is delinquent. The Debtor admits that she cannot find evidence of the August payment nor part of another monthly payment.

Debtor further states, "I was late in making my October and November payment, but brought those 2 current my Moneygrams purchased January 4, 2016" Declaration, Dckt. 68. However, Debtor offers no explanation as to how Debtor could have enough "extra" cash in January 2016, to make the October 2015, November 2015, and January 2016 payments in January 2016. Debtor also testifies that Debtor had "forgotten we had a quarterly payment due from the bonus received in October and will make that payment by January 11, 2016. *Id.* Debtor offers no explanation how they "forgot" the terms of their plan filed in this case seven months ago. The Trustee's records indicates that the Debtor remains delinquent.

As such, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

3. [14-31104-E-13](#) MICHAEL WALDO
DPC-2 Michael O Hays

MOTION TO DISMISS CASE
12-14-15 [[52](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 52. The Trustee seeks dismissal based on the Debtor's delinquency.

Michael Waldo ("Debtor") filed a response to the instant Motion on January 6, 2016. Dckt. 56. The Debtor states that he acknowledges the delinquency. The Debtor states that he is expected to be current by the time of the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,476.00 delinquent in plan payments, which represents multiple months of the \$492.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not shown that the delinquency has in fact been cured.

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

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

holding that:

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

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

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

4. [13-26705-E-13](#) ONDRE/ROBIN HENRY
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
12-10-15 [[27](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

5. [15-27005-E-13](#) MICHELLE CAMPAU
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES

11-9-15 [[30](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michelle Campau ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 9, 2015. The court computes that 72 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 November 3, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

6. [11-37806-E-13](#) JEARLEAN NASH MOTION TO DISMISS CASE
DPC-4 Jasmin Nguyen 12-10-15 [[101](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

7. [11-46706-E-13](#) VALERIE SMITH MOTION TO DISMISS CASE
DPC-3 Mary Ellen Terranella 12-8-15 [[99](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

8. [13-32506-E-13](#) RICHARD EADDY MOTION TO DISMISS CASE
DPC-2 Richard Jare 12-8-15 [[97](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

9. [15-21707-E-13](#) JUDITH LAYUGAN MOTION TO DISMISS CASE
DPC-3 Richard Sturdevant 12-10-15 [[101](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 101.

The Debtor has failed to respond to the instant Motion.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,546.96 delinquent in plan payments, which represents multiple months of the \$2,336.74 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

10.	15-28908 -E-13 WILLIAM/SARAH MCGARVEY Scott Sagaria	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 11-30-15 [16]
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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, 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 William and Sarah McGarvey ("Debtors"), Trustee, and other parties in interest on November 30, 2015. The court computes that 51 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on November 16, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$310.00.

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

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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

11. [15-22909-E-13](#) JENNIFER RIANDA MOTION TO DISMISS CASE
DPC-4 Lucas Garcia 12-14-15 [[60](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 60. The Trustee seeks dismissal due to the Debtor's delinquency.

Jennifer Rianda ("Debtor") filed a reply on January 4, 2016. Dckt. 64. The Debtor admits that she is delinquent. The Debtor states that the reason for the delay is due to the nature of her line of business and that she is expecting two large contracts to be paid in the early part of January 2016.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$26,250.00 delinquent in plan payments, which represents multiple months of the \$10,500.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

12. [13-24610-E-13](#) DAX/TINA CHAVEZ MOTION TO DISMISS CASE
DPC-4 Peter Macaluso 12-15-15 [[47](#)]

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 - Opposition Filed.

Correct 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 December 15, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be

resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 15, 2015. Dckt. 47. The Trustee seeks dismissal due to Debtor's delinquency.

Dax and Tina Chavez ("Debtor") filed opposition to the instant Motion on January 5, 2016. Dckt. 51. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,377.00 delinquent in plan payments, which represents one month of the \$2,377.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

13. [15-26710-E-13](#) ROBERTO RAMIREZ
DPC-1 Pro Se

MOTION TO DISMISS CASE
11-24-15 [[73](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 24, 2015. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 24, 2015. Dckt. 73. The Trustee seeks dismissal due to: (1) no verification of income to the Trustee; (2) failed to provide tax transcripts; (3) no verification of Social Security Number; (4) the Debtor's amended plan failed to file a Motion to Confirm and the plan is not the Debtor's best efforts nor provides treatment for certain creditors.

The Trustee asserts that the 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, the 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. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Additionally, the

Debtor failed to provide verification of his Social Security Number. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Notwithstanding dismissal, the federal jurisdiction of this court continues to the full extent provided by law. The dismissal of a bankruptcy case does not deprive the bankruptcy court of jurisdiction to address such remaining necessary issues as are proper under the Bankruptcy Code and relate to the proceedings before the court. See 11 U.S.C. § 349, Effect of Dismissal, § 105(a), and *Carraher v. Morgan Electric*, 971 F.2d 327, 328 (9th Cir. 1992) (Congress did not include termination of jurisdiction as one of the effects of dismissal.).

14. [15-27111](#)-E-13 EDWARD/SUSAN CARDOZA MOTION TO DISMISS CASE
DPC-2 Bruce Dwiggin 12-18-15 [[35](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

15. [15-26614](#)-E-13 NICOLE DOW MOTION TO DISMISS CASE
DPC-2 Julius Engel 12-16-15 [[48](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). 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). 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 court's decision is to continue the Motion to Dismiss and dismiss the case to 10:00 a.m April 20, 2016..

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 52.

Nicole Dow ("Debtor") filed an opposition to the instant Motion on January 6, 2016. Dckt. 52. The Debtor states that the Debtor has been attempting to negotiate with Wells Fargo Bank, N.A. as to the value of the

Debtor's vehicle. The Debtor states that due to the holidays, negotiations have been difficult but plans to prosecute the case moving forward. The Debtor requests a 75 day continuance to allow the Debtor to file and approve a plan after negotiating the secured status of Wells Fargo Bank, N.A.

The Trustee filed a response on January 7, 2016. Dckt. 54. The Trustee does not oppose the court allowing additional time.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 17, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan.

In light of the Debtor's request for a continuance and the Trustee's consent, the Motion is continued to 10:00 a.m. on April 20, 2016.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on April 20, 2016.

16. [11-28815](#)-E-13 JESSUP/SAREELA LAL
DPC-1 Douglas Jacobs

MOTION TO DISMISS CASE
12-16-15 [[52](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

17. [11-44415-E-13](#) CHARLENE WEAVER MOTION TO DISMISS CASE
DPC-1 Lisa McKee 12-8-15 [[22](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

18. [11-24616-E-13](#) KARLA JOHNSON MOTION TO DISMISS CASE
DPC-2 Dana Wares 12-16-15 [[98](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 98. The Trustee seeks dismissal due to the

Debtor's delinquency.

Karla Johnson ("Debtor") filed a reply to the instant Motion on January 7, 2016. Dckt. 102. The Debtor states that the Debtor will try to bring herself current by the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,664.38 delinquent in plan payments, which represents multiple months of the \$832.19 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

19. [13-31616-E-13](#) ADAM/SHERRI NEWLAND
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
12-17-15 [[31](#)]

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 - Opposition Filed.

Correct 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 December 17, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 17, 2015. Dckt. 31. The Trustee asserts that the Debtor's plan is in material default because the plan will complete in 517 months due to the Debtor failing to comply increase the plan payment for the increased contract amount for Deutsche Bank National Trust Company.

Adam and Sherri Newland ("Debtor") filed an opposition on January 4, 2016. Dckt. 35. The Debtor states that they will file and serve a modified plan prior to the hearing and be current under that plan.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 517 months due to the Debtor failing to increase plan payments. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

Unfortunately, the Debtor has not filed a modified plan nor a Motion to Confirm to date.

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

is dismissed.

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

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

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

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

20. [14-23416-E-13](#) MARIO/CHRISTINE BORREGO MOTION TO DISMISS CASE
DPC-3 Mark Wolff 12-8-15 [[74](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

21. [12-35317](#)-E-13 JOHN VIRGEN AND ELIZABETH MOTION TO DISMISS CASE
DPC-1 LOWERY-VIRGEN 12-8-15 [[47](#)]
Scott Sagaria

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

22. [14-20717](#)-E-13 CANDICE SILVA MOTION TO DISMISS CASE
DPC-2 Mohammad Mokarram 12-8-15 [[46](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

23. [12-38619](#)-E-13 WILLIAM HARTICON MOTION TO DISMISS CASE
DPC-5 James Keenan 12-16-15 [[116](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

24. [13-23119](#)-E-13 CYNTHIA MCDONALD MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 12-10-15 [[24](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

25. [15-25819-E-13](#) ERICKA HOLLOWAY MOTION TO DISMISS CASE
DPC-1 Muoi Chea 12-10-15 [[23](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 24. The Trustee seeks dismissal due to the Debtor's delinquency.

Miracle Wanzo ("Debtor") filed a response on January 6, 2016. Dckt. 28. The Debtor states that due to the way she makes payment through a merchant bank, she was unable to make payments. However, the Debtor states that she will be current by the time of the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,340.00 delinquent in plan payments, which represents multiple months of the \$2,670.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

27. 13-27223-E-13 MIGUEL/SONIA ESCOBAR CONTINUED MOTION TO DISMISS
DPC-5 Peter Macaluso CASE
9-16-15 [57]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

28. [14-29023-E-13](#) DARREN CARTER AND AMY MOTION TO DISMISS CASE
DPC-2 ALEXANDER-CARTER 12-17-15 [[53](#)]
Matthew DeCaminada

**APPEARANCE OF MATTHEW J. DECAMINADA, ESQ., COUNSEL
FOR DEBTOR REQUIRED FOR JANUARY 20, 2016 HEARING**

(Telephonic Appearance Permitted)

**FAILURE OF COUNSEL TO APPEAR SHALL
RESULT IN THE CASE BEING 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 - Opposition Filed.

Correct 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 December 17, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's decision is the hearing on the Motion to Dismiss is
continued to 10:00 a.m. on February 16, 2016.**

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 17, 2015. Dckt. 53. The Trustee seeks dismissal because the Debtor is in material default since the Debtor failed to provide for the priority claim of the United States Postal Service, Proof of Claim No. 13.

Darren Carter and Amy Alexander-Carter ("Debtor") filed an opposition on December 21, 2015. Dckt. 57. The Debtor states that the Debtors are now

separated and living in separate households for the past two months. Additional Debtor Amy Alexander-Carter's car was recently in an accident and totaled. The Debtor request that the court offer additional time to reevaluate the case.

The Bankruptcy Codes requires that a Chapter 13 plan provide for payment in full of priority claims, 11 U.S.C. § 1322(a)(2) & (4). The Debtor's plan does not provide for the priority claim of the United States Postal Service, Proof of Claim No. 13, in the amount of \$6,203.71. The failure to provide for this claim is grounds to dismiss the case.

Unfortunately, the Debtor's opposition does not provide sufficient cause to continue the case. The Debtor responded a nearly month prior to the hearing and, to date, no modified plan nor Motion to Confirm has been filed. Further, no evidence is offered in opposition. No declaration has been provided by Debtor. Instead, Debtor's counsel merely argues "facts" for which there is no evidence presented.

While the court appreciates the significant impact a deteriorating familial relationship can have on the Debtors and their ability to prosecute the case, merely saying so is not any evidence that there is the ability to prosecute this case.

Debtors' counsel is well aware that the court must be provided with evidence to support contentions that counsel chooses to argue. The absence of such evidence puts in question the good faith prosecution of this case.

The court will give Debtors the benefit of the doubt because if the argued facts do actually exist, they are already under tremendous pressure.

The court continues the hearing to 10:00 a.m. on February 16, 2016.

In posting the tentative ruling, the court informed Matthew DeCaminada, counsel for Debtors, that his appearance at the hearing was required (telephonic appearance permitted). The California State Bar reports that Mr. DeCaminada was admitted to practice law in June, 2015. <http://members.calbar.ca.gov/fal/Member/Detail/304240>. Though a new attorney, presumably Mr. DeCaminada is being supervised and mentored by the senior attorneys in his firm who regularly appear in this court. The court needs to address why the firm is filing pleadings asserting facts and failing to provide competent, credible, admissible evidence to support the facts the attorney argues.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on February 16, 2016.

29. [15-25823-E-13](#) ELENA/MIRCEA RAVEICA MOTION TO DISMISS CASE
DPC-2 Mark Wolff 12-7-15 [[37](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The case having previously been dismissed, the Motion 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, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the bankruptcy case having been previously dismissed.

30. [15-27124-E-13](#) MARIA ZENO
DPC-2 Scott Sagaria

MOTION TO DISMISS CASE
12-16-15 [[31](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

~~The court's decision is to dismiss the Motion to Dismiss.~~

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case (Dckt. 45), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without

prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

31. [15-27127](#)-E-13 JOSEPH/BRENDEN NOGOSEK MOTION TO DISMISS CASE
DPC-1 Scott Sagaria 12-7-15 [[19](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The case having previously been dismissed, the Motion 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, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

32. [12-37428-E-13](#) DREW/LORETTA ODABASHIAN
DPC-1 Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
5-19-15 [[37](#)]

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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 P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 37. The Trustee sought dismissal of the case on the basis that the Debtor is \$850.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment.

This court dismissed the case on June 29, 2015. Dckt. 43. That Order was vacated on October 13, 2015, and the Trustee's Motion to Dismiss was

rescheduled to be heard on November 4, 2015, at 10:00 a.m. Dckt. 62, 64.

Debtor filed an opposition on October 20, 2015. Dckt. 67. FN.1.

FN.1. The court notes that the October 13, 2015 Order to Reschedule the Motion to Dismiss had the following order language:

IT IS FURTHER ORDERED that opposition, if any, to the Motion shall be filed and served on or before October 19, 2015. Any opposition shall be supported by credible, properly authenticated evidence. The Opposition shall expressly address the financial ability of Debtor to perform and the sources of any monies used, or to be used, to cure the monetary defaults in this bankruptcy case. Replies to the Opposition shall be filed and served on or before October 26, 2015.

Dckt. 64.

The Opposition filed by Debtor was not timely as required by the prior order of the court. The Opposition states, that:

Due to a calendaring error, the answer to the Motion to Dismiss is being filed late. Counsel for Debtors respectfully requests that the answer be considered timely and the Motion to Dismiss be heard without penalty for the late response.

Dckt. 67.

Because of the unusual circumstances of this case, the court will grant leave for filing the response on October 20, 2015.

Debtor asserts the following in the opposition to the Motion to Dismiss this Chapter 13 case:

Debtors respond and state that they had the funds available to remit each missed payment and at the original Motion to Dismiss, they were only one payment behind.

In an effort to retain their vehicle, Debtors remitted payments directly to Wells Fargo Dealer Services for four months June, July, August, and September, in addition to remitting the difference in Plan payments to Counsel directly. Counsel has since sent the monies to the Trustee and the funds have been applied to their Plan.

Counsel for Debtor is waiting for confirmation that Wells Fargo Dealer Services received the sum of \$1,262.12 directly.

Debtors are now technically current, but a Stipulation will need to be signed and filed with Wells Fargo Dealer Services, Debtors and the Trustee to account for the direct payments to the Class 2 claim of Wells Fargo Dealer Services.

Dckt. 67, p. 1, 2 (references to evidence omitted).

NOVEMBER 4, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on January 20, 2016 allow Debtor to prosecute a plan and recover, for the estate, the attorneys' fees paid prior counsel. Dckt. 72.

TRUSTEE'S STATUS UPDATE

The Trustee filed a status report on January 15, 2016. Dckt. 77. The Trustee reports that the Debtor is delinquent \$762.12 in plan payments. Additionally, the Trustee states that the Debtor's prior counsel has provided accounting of the fees previously earned. The Trustee asserts that based on the accounting, the Trustee does not believe that disgorgement is necessary.

DEBTOR'S SUR-REPLY

The Debtor filed a sur-reply on January 18, 2016. Dckt. 80. The Debtor states that they have paid directly to Wells Fargo Bank, N.A. the missing funds, and to whom Debtor's counsel has conveyed a request for the amendment to the proof of claims secured amount in the amount paid directly during the dismissal.

A review of the court's docket shows no stipulation has been filed.

DISCUSSION

Debtor failed to present authentic evidence that "expressly address[es] the financial ability of Debtor to perform and the sources of any monies used, or to be used, to cure the monetary defaults in this bankruptcy case." Instead, the Debtor states what they will do rather than providing evidence that the evidence has been cured.

The exhibit provided by the Debtor is an unauthenticated copy of the Debtor's payment history on the Trustee's website. The exhibit shows that the Debtor is still delinquent in the amount of \$1,262.12. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The "Opposition" is troubling in that it does not address the reason for the default and why Debtor elected not to perform the Plan. The Opposition states that Debtor had the money to make the plan payments, but elected not to make the payments. Instead, they chose to pay Wells Fargo Bank, N.A. directly (apparently because they preferred to pay only the Bank), and then had their attorney hold what would have been the remaining about of the plan payment. Debtor chose not to make the payment to the Trustee. They did this with the knowledge, and assistance, of their attorney.

Debtor's most recent declaration states that they could not make the payment because their business revenues had declined. Declaration, p. 2:9-13; Dckt. 68. Debtor also testifies that the business has not improved. *Id.*, p. 2:5-8. Because of the lack of money, Debtor made the decision to default in the plan and pay the creditors which they preferred.

The exact statements of Debtor are:

"4. We are small business owners and our Corvette parts business is tied directly to the strength of the economy and business has not improved since the filing of our Chapter 13 case.

5. We fell behind in our payments to the Trustee because of a decline in sales. We had to choose whether to pay the Trustee or make our mortgage payment. Since our home and the business are on the same property, we had to pay the mortgage or risk losing our home and our business..."

Declaration, Dckt. 13.

Debtor continues in the declaration to blame their two prior attorneys for failing to communicate with or act for Debtor. Debtor actually had two different law firms purporting to represent Debtor. Debtor does not explain how any such failure to communicate or act for Debtor ameliorates Debtor's lack of monies to make the plan payments.

Debtor does not provide any explanation as to how they can perform going forward or what they intend to do in this bankruptcy case. They just say that their business is not producing enough money to make the payments. Merely because the current (third) counsel states in the Opposition that he has told Debtor that the plan payments must be made is not evidence that the Plan is feasible or that Debtor can make the plan payments.

The court does not find the testimony sufficient to allow this case to proceed. The Declaration carefully avoids providing any current financial information or make any showing that Debtor can actually perform the Plan, or any plan, if the case were allowed to proceed. Debtor also fails to provide any testimony as to what they intend to do in this case if it is not dismissed.

Debtor's counsel argued that Debtor stopped making the payments because Debtor thought that the plan could not be completed. Debtor was not advised of the possibility of modifying the plan. Debtor, with assistance of his new counsel, now desires to try and modify the plan.

As addressed at the hearing, Debtor's explanation implicates the need for Debtor to recover from prior counsel the attorneys' fees paid to them. Debtor's explanation is that prior counsel failed to provide him with adequate representation.

However, the Debtor's response fails to show that the delinquency has been cured. While the need for disgorgement may no longer be necessary, the fact remains that the Debtor is delinquent.

These issues have been before the court since May 2015 when this Motion was first filed. In August 2015 Debtor filed the motion to vacate the order dismissing the case, which was granted, and the Motion to Dismiss restored to the court's November 4, 2015 calendar. Orders, Dckts. 64, 62. That hearing was then continued to January 20, 2016. The court's file is devoid of any attempts by Debtor to actually prosecute the case. Rather, only tepid responses are made to the Trustee's Motion to Dismiss.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$762.12 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court continues the hearing to allow Debtor to prosecute a plan and recover, for the estate, the attorneys' fees paid prior counsel.

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

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

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

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

33. [15-25330-E-13](#) LUZ/CECILIA VILLANUEVA MOTION TO DISMISS CASE
DPC-1 Seth Hanson 12-14-15 [[23](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). 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). 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, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 23.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,325.00 delinquent in plan payments, which represents multiple months of the \$1,775.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

34. [14-26731](#)-E-13 AIDA PALMA MOTION TO DISMISS CASE
DPC-1 David Ritzinger 12-8-15 [[22](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

35. [15-23031](#)-E-13 WILLIAM HAMILTON MOTION TO DISMISS CASE
DPC-4 Marc Caraska 12-16-15 [[90](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

36. [15-23331](#)-E-13 SARAH GWALTNEY MOTION TO DISMISS CASE
DPC-2 Mary Ellen Terranella 12-8-15 [[31](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

37. [11-48733-E-13](#) WILLIE HAYNES
DPC-8 Curt Henneke

MOTION TO DISMISS CASE
12-16-15 [[42](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). 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). 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, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 42.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,323.00 delinquent in plan payments, which represents multiple months of the \$441.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file a response to the instant Motion.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

38. [11-28434-E-13](#) MICHAEL/WENDY SCOTT MOTION TO DISMISS CASE
DPC-4 Stephen Ruehmann 12-14-15 [[61](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

39. [14-25534-E-13](#) PORCHE DARBY MOTION TO DISMISS CASE
DPC-4 Rabin Pournazarian 12-8-15 [[41](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 8, 2015. Dckt. 42.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$549.00 delinquent in plan payments, which represents multiple months of the \$183.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file a response to the instant Motion.

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

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

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

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

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

40. [15-24435-E-13](#) FRED/SUEANE RICHARDS MOTION TO DISMISS CASE
DPC-1 Seth Hanson 12-14-15 [[20](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

41. [15-27035-E-13](#) FREDERICK FONOLI
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-8-15 [[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. If the court's tentative ruling becomes its final ruling, 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 Frederick Fonoli ("Debtor"), Trustee, and other parties in interest on December 8, 2015. The court computes that 43 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 December 3, 2015).

The court's decision is to sustain the Order to Show Cause and order the case 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 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.

Correct 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 November 6, 2015. By the court's calculation, 76 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 6, 2015. Dckt. 24.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$50.00 delinquent in plan payments, which represents multiple months of the \$50.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the 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, the 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. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

43. [11-30336-E-13](#) PATRICIA JACKSON
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
12-16-15 [[65](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

44. [11-40636-E-13](#) DICKIE/GAIL HILL
DPC-1 Diana Cavanaugh

MOTION TO DISMISS CASE
12-16-15 [[48](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 48. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Dick and Gail Hill ("Debtor") filed an opposition on January 6, 2016. Dckt. 52. The Debtor states that prior to the hearing they will file a modified plan and Motion to Confirm to cure the default.

Unfortunately, to date, the Debtor has failed to file a modified plan or Motion to Confirm.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,362.00 delinquent in plan payments, which represents multiple months of the \$2,181.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

holding that:

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

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

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

45. [13-32136-E-13](#) ADAM SILBER MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 12-8-15 [[49](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

46. [13-35536-E-13](#) GARY/AIMEE HOURCAILLOU MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 12-10-15 [[54](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

47. [13-35638-E-13](#) CHARLES LEONARD MOTION TO DISMISS CASE
DPC-1 Robert Huckaby 12-16-15 [[38](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

48. [15-27738-E-13](#) ANNABELLE PAULY
Thomas Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-4-16 [[20](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Annabelle Pauly ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 4, 2016. The court computes that 16 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 December 30, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

49. [12-20541](#)-E-13 MARIA GONZALES JUAREZ
DPC-1 Candace Brooks

MOTION TO DISMISS CASE
12-16-15 [[72](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

50. [15-25641](#)-E-13 FRANK DAVIS
George Burke

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-18-15 [[31](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Frank Davis ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 18, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$23.00 due on November 13, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

51. [15-27341](#)-E-13 ROBERT LEACH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-23-15 [[45](#)]

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, 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 Robert Leach ("Debtor"), Trustee, and other parties in interest on November 23, 2015. The court computes that 58 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 November 17, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

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

52. [15-27341](#)-E-13 ROBERT LEACH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-22-15 [[55](#)]

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, 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 Robert Leach ("Debtor"), Trustee, and other parties in interest on December 22, 2015. The court computes that 58 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 December 17, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

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

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

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

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

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

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and the Office of the United States Trustee on November 17, 2015. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on November 17, 2015. Dckt. 39.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments, which represents one month of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

54. [15-23042-E-13](#) ROOSEVELT/DIANE JAMES MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 12-16-15 [[31](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 31. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Roosevelt and Diane James ("Debtor") filed an opposition on January 5, 2016. Dckt. 52. The Debtor states that they will be current by the hearing date..

Unfortunately, to date, the Debtor has failed to provide evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

55. [14-24643-E-13](#) LAQUETA MARTIN MOTION TO DISMISS CASE
DPC-5 Susan Dodds 12-17-15 [[64](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

56. [12-32244](#)-E-13 SHANE/YAMILETH SHANNON CONTINUED MOTION TO DISMISS
DPC-8 Richard Chan CASE
10-7-15 [[72](#)]
DEBTOR DISMISSED: 12/1/2015
JOINT DEBTOR DISMISSED:
12/1/2015

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The case having previously been dismissed, the Motion 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, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

57. [15-25745-E-13](#) ROBERTO/ROSAEMMA CARRAZCO MOTION TO DISMISS CASE
DPC-1 James Pitner 12-15-15 [[38](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 15, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 15, 2015. Dckt. 38.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,776.00 delinquent in plan payments, which represents multiple months of the \$2,388.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor failed to respond to the instant Motion.

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

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

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

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

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

58. [15-27345-E-13](#) MICHAEL HAMMER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-23-15 [[31](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, 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 Michael Hammer ("Debtor"), Trustee, and other parties in interest on November 23, 2015. The court computes that 58 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 November 17, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which 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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

59. [15-27345-E-13](#) MICHAEL HAMMER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-23-15 [[25](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, 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 Michael Hammer ("Debtor"), Trustee, and other parties in interest on October 23, 2015. The court computes that 89 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 October 19, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which 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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

60. [15-27345](#)-E-13 MICHAEL HAMMER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-22-15 [[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. If the court's tentative ruling becomes its final ruling, 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 Michael Hammer ("Debtor"), Trustee, and other parties in interest on December 22, 2015. The court computes that 29 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 December 17, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which 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 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on November 17, 2015. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 17, 2015. Dckt. 27.

The Trustee argues that the Debtor did not commence making plan payments and is \$25.00 delinquent in plan payments, which represents multiple months of the \$25.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee asserts that the 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, the 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. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

62. [12-27946-E-13](#) CHUCK/WENDY STIEDE
DPC-6 Scott Johnson

CONTINUED MOTION TO DISMISS
CASE
7-31-15 [[129](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 31, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The hearing on the Motion to Dismiss is granted and the case is dismissed.

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 31, 2015. Dckt. 129. Chuck and Wendy Stiede ("Debtor") did not file an opposition.

Trustee seeks dismissal of the case on the basis that the Debtor is \$5,700.00 delinquent in plan payments, which represents multiple months of the \$1,900.00 plan payment. 11 U.S.C. § 1307(c)(1) permits the dismissal of the case for failure to make plan payments.

SEPTEMBER 19, 2015 HEARING

At the hearing, the court continued the Motion until October 14, 2015. Dckt. 134, 136.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental Declaration of Chuck and Wendy Stiede on September 23, 2015. Dckt. 137. Debtor declares:

1. The delinquency was caused by some critical repairs to Debtor's home and vehicles, including replacing a refrigerator for \$2,200.00 and a washer/dryer set for \$800.00. Debtor moved into the residence in 1989, so Debtor asserts the repairs needed to be addressed immediately.
2. The delinquency was also a result of "some emotional, confidential personal issues as well as issues with the family as a whole. These personal issues have caused us to reallocate our funds from time to time in order to address these issues."
3. Debtor believes the personal and family issues have been resolved, so Debtor can make the regular monthly payments.
4. Debtor Wendy Stiede also received "some additional hours at work" to cure the prior delinquency. Debtor does not believe the hours are likely to continue and does not budget for them.

Dckt. 137, ¶ 3-6.

TRUSTEE'S RESPONSE

Trustee filed a response on September 30, 2015. Dckt. 139. Trustee responds:

1. Debtor is current through September 23, 2015. However, on September 25, 2015, a payment for \$1,900.00 came due, and has not been paid. Thus, Debtor is still delinquent;
2. Debtor's Declaration fails to sufficiently explain how much Debtor was paid for Debtor Wendy Stiede's additional hours, how many hours Wendy received, or when those hours were received and when they ended;
3. Debtor failed to present sufficient evidence to demonstrate how the Debtors were able to make \$3,100.00 in repair payments, plus the \$5,700.00 payment to cure the delinquency, on Debtor's additional hours;
4. Debtor's Declaration fails to provide sufficient information on how much money was diverted to the family and personal issues, and whether those issues caused the Debtors to hold onto the funds, and if so where those funds were kept.

OCTOBER 14, 2015 HEARING

At the hearing, the court continued the hearing to allow the Debtor to file supporting documentation. Dckt. 141.

DISCUSSION

To date, no supplemental papers have been filed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,900.00 delinquent in plan payments, which represents one month of the \$1,900.00 plan payment. Debtor failed to present sufficient evidence to demonstrate how and what funds were used to cure prior delinquency, and also failed to make the most recent plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because Debtor failed to present evidence that demonstrates how Debtor cured the prior delinquency, what caused the prior delinquency, or information on Debtor's specific circumstances that made this payment a unique circumstance, cause exists to dismiss this case. The Motion to Dismiss is granted and the case will be dismissed.

Clearly Debtor has faced some financial and personal issues. Unfortunately, Debtor and Counsel have chosen to provide a perfunctory, two page (including the first page with the case caption, listing of counsel, and document title) declaration. Dckt. 137. The court appreciates that public judicial proceedings can be "uncomfortable" forums in which personal and family matters are disclosed. But that is the nature of bankruptcy, especially when they are relied upon by a party. Attorneys know how to present highly confidential or potentially unnecessarily embarrassing, but of critical importance to the party's case, under seal. None has been offered to the court.

After failing to provide the necessary supporting documentation, cause exists to dismiss the case.

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

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

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

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

63. [15-25446-E-13](#) DONALD MAH MOTION TO DISMISS CASE
DPC-3 Ronald Holland 12-18-15 [[59](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 18, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Dismiss to 10:00 a.m. on February 16, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 18, 2015. Dckt. 59. The Trustee seeks dismissal due to the Debtor failing to file a subsequent plan after the denial of the Debtor's first.

Donald Mah ("Debtor") filed an opposition to the instant Motion on December 22, 2015. Dckt. 63. The Debtor states that he is seeking to have his attorney withdraw so that the Debtor can represent himself. The Debtor requests additional time to prepare a plan and Motion to Confirm.

On January 12, 2016, the court granted the Debtor's attorney's Motion to Withdraw as Counsel. Dckt. 70.

Now that the Debtor is in pro per, the court will continue the instant Motion to 10:00 a.m. on February 17, 2016 to allow the Debtor the opportunity to file a proposed amended plan.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on February 16, 2016.

64. [15-27047-E-13](#) PRISCILLA/ANDREW CARRASCO ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO PAY FEES
11-12-15 [[43](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Priscilla and Andrew Carrasco ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 12, 2015. The court computes that 69 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on November 9, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 84. The Trustee seeks dismissal due to the Debtor's delinquency.

Jerry Jors ("Debtor") filed an opposition to the instant Motion on January 6, 2016. Dckt. 88. The Debtor disputes the delinquency because he believes that the Trustee's accounting does not list a payment made by the Debtor. The Debtor states that he will pay the Trustee \$2,030.00 prior to the hearing which the Debtor believes will make him current.

The Trustee filed a response on January 7, 2016. Dckt. 91. The Trustee states that the Debtor's accounting is inaccurate. The Trustee states that the Debtor has missed more than one payment, which has caused the delinquency as evidenced by the Trustee's accounting.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,201.98 delinquent in plan payments, which represents multiple months of the \$1,730.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

is dismissed.

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

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

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

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

66. [15-20149](#)-E-13 ANNA PETERSON MOTION TO DISMISS CASE
DPC-2 Richard Hall 11-6-15 [[121](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - Response Filed - No Opposition to Dismissal.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 6, 2015. By the court's calculation, 75 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 6, 2015. Dckt. 121. The Trustee seeks dismissal due to the Debtor's delinquency and failure to file an amended plan.

Anna Peterson ("Debtor") filed a response to the instant Motion on January 7, 2016. Dckt. 125. The Debtor states that she has no opposition to the instant Motion.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$420.00 delinquent in plan payments, which represents multiple months of the \$435.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 case shall proceed in this court.

68. [15-26153](#)-E-13 VICTORIA ANDERSEN MOTION TO DISMISS CASE
DPC-2 Michael O'Dowd Hays 12-15-15 [[28](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 15, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 15, 2015. Dckt. 28. The Trustee seeks dismissal due to the Debtor's delinquency.

Victoria Anderson ("Debtor") filed a response to the instant Motion on January 6, 2016. Dckt. 32. The Debtor states that financial emergencies arose, including a vehicle repair and her inability to get to work. The Debtor states that she hopes to be current by the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,650.00 delinquent in plan payments, which represents multiple months of

the \$1,325.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

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.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on November 24, 2015. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 24, 2015. Dckt. 26.

The Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor failed to respond to the instant Motion.

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

is dismissed.

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

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

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

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

70. 15-24954-E-13 JESSICA BELLOSO MOTION TO DISMISS CASE
DPC-1 Susan Dodds 12-8-15 [16]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

71. [15-27154-E-13](#) EVANGELINA GARIBAY
DPC-2 Charnel James

MOTION TO DISMISS CASE
12-7-15 [[24](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 7, 2015. Dckt. 24.

The Trustee argues that the Debtor did not commence making plan payments and is \$4,065.92 delinquent in plan payments, which represents multiple months of the \$982.96 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 24, 2015. 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 the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

72. [15-27854-E-13](#) DELANOYE ROBERTSON MOTION TO DISMISS CASE
DPC-1 Richard Jare 11-24-15 [[21](#)]

No 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 24, 2015. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on March 1, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on November 24, 2015. Dckt. 21. The Trustee seeks dismissal due to the Debtor being over the secured debt limit of 11 U.S.C. § 109(e), plan was not served, Debtor cannot make the payments due to the Schedules I and J do not accurately reflect the Debtor's income and expenses, there is no verification of income, no tax return has been provided, and no verification of Social Security Number.

Delanoye Robertson ("Debtor") filed an opposition to the instant Motion on January 6, 2016. Dckt. 27. The Debtor states that due to Debtor's counsel being ill, there was a delay in filing a plan and correct schedules. The Debtor

states that the original case was filed with the help of a paralegal and were incorrect. The Debtor requests that the Motion be denied.

The Debtor's counsel filed a declaration of counsel on January 18, 2016 to state that the updated documents have been sent to the Debtor for review. Dckt. 40. The Debtor's counsel states that the delay is due to his illness and apologizes.

In looking at the original schedules in this case, Debtor listed a \$2,153,440 claim secured by the St. George, Utah property, which is given a value of \$900,000. Dckt. 1. On Amended Schedule D filed on January 15, 2016, that same debt is listed, but reduced to \$0.00, with the stated reason, "REDUCED TO \$0 AS THE UTAH STATUE OF LIMITATIONS FOR COLLECTION HAS RUN." Dckt. 35 at 11. These Amended Schedules were eFiled by Debtor's counsel.

The Additional Provisions of the Amended Chapter 13 Plan filed on January 15, 2016, makes the following "provision" for the claim secured by the Utah Property:

"Section 6.05 - General Conditions,
There is no provision for, Bayview Loan Servicing, LLC, as this party with a Deed of Trust is beyond the Statute of Limitations for judicial foreclosure in Utah, and that is a state which apparently has prevented nonjudicial foreclosure under these circumstances."

Dckt. 36 at 6. The Plan does not provide for how this claim, or lien, will be addressed in the bankruptcy case. No provision is made for Debtor to commence a quiet title action as party of the bankruptcy case. No provision is made for creating a Debtor funded bond if it turns out that the interests in the real property are enforceable and the automatic stay worked an improper enjoining of the creditor. (A self-funded cash bond rather than requiring Debtor to obtain a third-party or cash up front bond as provided by Fed. R. Civ. P. 65(c) and Fed. R. Bankr. P. 7065.)

No points and authorities has been provided with the Motion to Confirm the Modified Chapter 13 Plan. No authority is provided for the proposition that the security in interest in the real property is no enforceable due to the statute of limitations having run. Rather than the plan dealing with creditors and claims, it seeks to ignore a claim which may be in excess of \$1,000,000.

Further, in looking at the Proof of Service for the Motion, Plan, and supporting pleadings, they have not been served on a creditor for the alleged unenforceable claim, but only on the loan servicing company. Dckt. 37.

It does not appear that Debtor is attempting to prosecute this case as required by the Bankruptcy Code, but try and mislead the court into confirming a plan which creates the illusion that this \$1,000,000+ possible secured claim has been addressed.

However, the court give the Debtor the benefit of the doubt and that the contention that the debt and lien against the Utah real property are unenforceable and void. The court continues this hearing to 3:00 p.m. on March 1, 2016, so that it may be conducted in conjunction with the hearing on the motion to approve the proposed Chapter 13 Plan. The court will also order

Debtor to file a points and authorities addressing these legal issues, to properly serve the actual creditor (not merely the loan servicing company), and provide the necessary evidence to support such a contention as necessary for the confirmation process.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 3:00 p.m. on March 1, 2016 to be heard in conjunction with the Motion to Confirm.

IT IS FURTHER ORDERED that:

- A. On or before February 1, 2016 Debtor shall file a points and authorities and supporting evidence for the contention asserted in the Schedules and Amended Plan that the creditor whose claim is secured by the 2228 N. Chaco Trail, St. George, Utah property is an unenforceable claim and that the lien or other interest securing such claim in the property is void and unenforceable.
- B. Said points and authorities, and any pleadings relating to the Chapter 13 plan and motion to confirm not previously served, shall be served on the creditor having the alleged unenforceable claim, Bayview Loan Servicing, LLC (the apparent loan servicer for such creditor), the Chapter 13 Trustee, and U.S. Trustee, on or before February 1, 2016.

73. [15-29454-E-13](#) MICHAEL/KAYLENE YANDEL ORDER TO SHOW CAUSE - FAILURE
Scott Sagaria TO PAY FEES
12-18-15 [[14](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michael and Kaylene Yandel("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 18, 2015. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on December 4, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

74. [11-44656-E-13](#) PAUL/DIANE DUMETZ MOTION TO DISMISS CASE
DPC-8 Jasmin Nguyen 12-15-15 [[48](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

75. [11-46956-E-13](#) CAROLINA PENA MOTION TO DISMISS CASE
DPC-6 Matthew Gilbert 12-8-15 [[43](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

76. [13-24756-E-13](#) JEFFREY/TINA SOOTER MOTION TO DISMISS CASE
DPC-1 Robert Huckaby 12-8-15 [[96](#)]

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 - Opposition Filed.

Correct 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 December 8, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 8, 2015. Dckt. 96. The Trustee seeks dismissal due to Debtor's delinquency.

Jeffrey and Tina Sooter ("Debtor") filed an opposition to the instant

Motion on January 6, 2016. Dckt. 100. The Debtor states that they sent a total of \$1,305.10 on December 18, 2015 and January 4, 2016. However, the Debtor admits that they are behind one plan payment in the amount of \$652.55 and states that they will be current prior to the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,305.10 delinquent in plan payments, which represents multiple months of the \$652.55 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency is fully cured.

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

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

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

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

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

77. [15-26656-E-13](#) GARY STEPHAN CONTINUED MOTION TO CONVERT
DPC-2 Dale Orthner CASE TO CHAPTER 7 AND/OR MOTION
TO DISMISS CASE
10-7-15 [[24](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

79. [15-28456-E-13](#) GREGORY BRUTUS
Mark Wolff

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-4-16 [[36](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Gregory Brutus ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 4, 2016. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on December 29, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 18, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 18, 2015. Dckt. 32. The Trustee seeks dismissal due to Debtor's failure to attend the Meeting of Creditors, not providing tax returns, failing to file all pre-petition tax returns, delinquency, and failing to pay filing fees.

Gregory Brutus ("Debtor") filed an opposition on January 6, 2015. Dckt. 37. The Debtor states that he was unable to attend the Meeting of Creditors because of illness and will be attending the continued meeting. The Debtor further states that he has contacted the Internal Revenue Service to obtain copies of his past four years tax returns. Lastly, the Debtor states that the court's filing fee will be paid prior to the hearing.

Unfortunately, the Debtor has not provided evidence that he has, in fact, provided the information to the Trustee nor that the delinquency has been cured.

The Trustee argues that the Debtor did not commence making plan payments and is \$150.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. .

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Moreover, the Trustee argues that the Debtor's federal income tax return for the 2013 and 2014 tax years still have not been filed, as evidenced by the Internal Revenue Service's Proof of Claim No. 1. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

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

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

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

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

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

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

81. [11-21457-E-13](#) EDWARD BELLO AND DEBBIE MOTION TO DISMISS CASE
DPC-4 UZZARDO-BELLO 12-8-15 [[69](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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. [15-25257-E-13](#) MEGAN CARR
Jeremy Heebner

CONTINUED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
10-5-15 [[32](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Megan Carr ("Debtor"), Debtor's attorney, and Trustee on October 7, 2015. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 28, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was continued on November 4, 2015 to allow the Debtor to make necessary payments. The court's docket reflects that the default in payment which 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 case shall proceed in this court

83. [15-25257](#)-E-13 MEGAN CARR

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-2-15 [[47](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Megan Carr ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 2, 2015. The court computes that 79 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 October 28, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

84. 13-20059-E-13 IRMA QUIAMBAO
DPC-6 Kristy Hernandez

MOTION TO DISMISS CASE
12-14-15 [47]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 47. The Trustee seeks dismissal due to the Debtor's delinquency.

Irma Quiambao ("Debtor") filed an opposition to the instant Motion on January 6, 2016. Dckt. 51. The Debtor states that she intends to mail a payment on January 15, 2016.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,580.00 delinquent in plan payments, which represents multiple months of the \$2,860.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has failed to provide evidence that the delinquency has been cured.

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

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

holding that:

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

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

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

85. [15-24761](#)-E-13 CHRISTOPHER/GLEE WOODYARD MOTION TO DISMISS CASE
DPC-1 Oliver Greene 12-14-15 [[51](#)]

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 - Opposition Filed.

Correct 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 December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 51. The Trustee seeks dismissal due to the Debtor's delinquency.

Christopher Woodyard Jr. and Glee Anna Woodyard ("Debtor") filed an opposition to the instant Motion. Dckt. 55. The Debtor state that they will try

to be current by the time of the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,282.00 delinquent in plan payments, which represents multiple months of the \$2,641.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor does not provide evidence that the delinquency was cured.

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

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

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

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

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

86. [14-31363-E-13](#) AARON/MARIA MAREADY
DPC-1 Guy David Chism

MOTION TO DISMISS CASE
12-10-15 [[99](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 99.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,544.28 delinquent in plan payments, which represents multiple months of the \$4,847.92 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

87. [15-26063](#)-E-13 REGINALD NORRIS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-3-15 [[31](#)]**

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Reginald Norris ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 3, 2015. The court computes that 78 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay one or more installment(s).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on November 9, 2015 (Dckt. 35), 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.

88. [15-27964-E-13](#) MARILYN KING
DPC-2 Timothy Walsh

MOTION TO DISMISS CASE
12-11-15 [[20](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 11, 2015. 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). 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). 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, filed the instant Motion to Dismiss on December 11, 2015. Dckt. 20.

The Trustee argues that the Debtor did not commence making plan payments and is \$1,398.00 delinquent in plan payments, which represents multiple months of the \$1,398.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the 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 which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

89. 15-25266-E-13 FRANK VALENZUELA MOTION TO DISMISS CASE
DPC-2 Michael Croddy 12-14-15 [[23](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 14, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 14, 2015. Dckt. 23. The Trustee seeks dismissal due to the Debtor's delinquency.

Frank Valenzuela, Jr. ("Debtor") filed an opposition to the instant

Motion on January 6, 2016. Dckt. 27. The Debtor states that he intends to be current by the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$462.00 delinquent in plan payments, which represents multiple months of the \$154.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor does not provide evidence that the Debtor is current.

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

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

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

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

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

90. [15-29068-E-13](#) MOHAMMAD NAZARIROD ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
12-28-15 [[24](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Mohammad Nazarirod ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 28, 2015. The court computes that 23 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 December 23, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

91. [14-25069-E-13](#) **KENNETH/RENETTE JOHNSON** **MOTION TO DISMISS CASE**
DPC-7 **Richard Jare** 12-10-15 [[107](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 107.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$16,050.00 delinquent in plan payments, which represents multiple months of the \$2,700.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion.

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

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

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

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

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

92. [15-23769](#)-E-13 CORY LEE COLEMAN MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 12-18-15 [[53](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

93. [15-26969](#)-E-13 JESUS AVILA MOTION TO DISMISS CASE
DPC-2 Douglas Jacobs 12-18-15 [[52](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The case having previously been dismissed, the Motion 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, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

94. [14-29670-E-13](#) CHERRONE PETERSON MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 12-18-15 [[178](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 18, 2015. 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). 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). 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, filed the instant Motion to Dismiss on December 18, 2015. Dckt. 178.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 27, 2015. 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 the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor failed to file a response to the instant Motion.

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

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

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

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

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

95.	15-26770-E-13 JUNE KOGER Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 12-31-15 [27]
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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, 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 June Koger ("Debtor"), Trustee, and other parties in interest on December 31, 2015. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on December 28, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

The court's docket reflects that the default in payment which 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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

96. [15-26770](#)-E-13 JUNE KOGER ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO PAY FEES
11-2-15 [[16](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on June Koger ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 2, 2015 . The court computes that 79 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 October 27, 2014).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

97. [15-26770-E-13](#) JUNE KOGER
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-1-15 [[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. If the court's tentative ruling becomes its final ruling, 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 June Koger ("Debtor"), Trustee, and other parties in interest on December 1, 2015. The court computes that 50 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 November 30, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

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

98. [15-26770-E-13](#) JUNE KOGER
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
12-28-15 [[23](#)]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 28, 2015. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 28, 2015. Dckt. 23.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$385.00 delinquent in plan payments, which represents multiple months of the \$130.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response, though not required, to the instant Motion.

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

is dismissed.

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

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

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

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

99. 13-25371-E-13 ROY/MICHELLE MARIANO MOTION TO DISMISS CASE
DPC-3 Mark Wolff 12-10-15 [42]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

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 - Opposition Filed.

Correct 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 December 7, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 7, 2015. Dckt. 28. The Trustee seeks dismissal due to the Debtor's delinquency.

Manuel and Lori Garcia ("Debtor") filed an opposition to the instant Motion on January 5, 2016. Dckt. 38. The Debtor states that they will file and serve a modified plan and Motion to Confirm prior to the hearing

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,750.00 delinquent in plan payments, which represents multiple months of the \$2,375.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

To date, the Debtor has failed to file and serve any modified plans or Motion to Confirm.

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:

102. [11-32476-E-13](#) PLEXICO MICHAUX
DPC-4 Peter Macaluso

MOTION TO DISMISS CASE
12-16-15 [[88](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 88. The Trustee seeks dismissal due to Debtor's delinquency.

Plexico Michaux ("Debtor") filed an opposition to the instant Motion on January 5, 2016. Dckt. 92. The Debtor states that he will be current on or before the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,010.00 delinquent in plan payments, which represents multiple months of the \$505.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

104. [15-21776-E-13](#) KIMBERLY BATES
DPC-1 Rick Morin

MOTION TO DISMISS CASE
12-8-15 [[22](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 8, 2015. Dckt. 22.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,390.00 delinquent in plan payments, which represents multiple months of the \$1,475.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

105. [11-48177](#)-E-13 JOYCE LEE MOTION TO DISMISS CASE
DPC-2 Susan Dodds 12-10-15 [[54](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 4, 2015. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 4, 2015. Dckt. 49. The Trustee seeks dismissal due to the Debtor's delinquency. The Trustee asserts that the Debtor failed to make a lumpsum of \$3,250.55 on October 6, 2015 according to the plan but has yet to do so.

David Cierley ("Debtor") filed an opposition to the instant Motion on December 28, 2015. Dckt. 53. The Debtor states that the plan contains a scrivener's error and meant to say that the \$3,250.55 was to be paid in equal monthly payments to the Trustee for the benefit of the unsecured creditors. The Debtor intends to file a modified plan and Motion to Confirm.

The Trustee filed a response on January 8, 2016. Dckt. 54. The Trustee states that the Debtor is incorrect and that the plan and the order confirming make it clear that the lump sum was to be paid on or before October 6, 2015. Dckt. 43 and 48. The Trustee states that the debtor remains delinquency on monthly payments in the amount of \$3,140.55 and the \$3,250.55 has not yet been paid.

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

is \$3,140.55 delinquent in plan payments, which represents multiple months of the \$1,535.00 plan payment and delinquent in the lump sum payment of \$3,250.55. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

To date, the Debtor has failed to show evidence that the delinquency has been cured nor has the Debtor filed a modified plan. Debtor provided no evidence in opposition to this Motion, but only counsel's argument of an alleged "scrivener's error."

The Chapter 13 Plan at issues provides for Debtor to make \$1,535.00 payments for sixty months. Dckt. 25. The Trustee objected to the Plan, arguing that there was \$4,334.07 in non-exempt equity retained by the Debtor and the proposed Plan did not meet the Chapter 7 liquidation requirement. Opposition, Dckt. 36. Debtor responded, that after taking into account an amendment to the claimed exemptions and a Chapter 7 trustee's fees if the assets were so liquidated, there was actually non-exempt equity of \$2,955 which must be provided for in a Chapter 13 Plan. Debtor proposed providing for such additional amount in the order confirming the plan. Response, Dckt. 40.

The court's findings and conclusions are stated in the Civil Minutes for the September 15, 2015 hearing on the Motion to Confirm. Dckt. 43. The court determined that the correct computation of the non-exempt equity was \$3,250.55, and that,

"The amended Plan, after the order confirming is amended to provide for the payment to the Trustee of \$3,250.55 on or before October 6, 2015 to be paid to unsecured creditors, complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed."

Id.

The court's September 20, 2015 order granting the Motion to Confirm the Chapter 13 Plan states,

"IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 22, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, **providing for the payment to the Trustee of \$3,250.55 on or before October 6, 2015 to be paid to unsecured creditors** transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court."

Order, Dckt. 45 [emphasis added].

The Order Confirming the Chapter 13 Plan filed on October 15, 2015, which was prepared by counsel for Debtor and approved as to form by the Chapter 13 Trustee, states,

"IT IS FURTHER ORDERED that **Debtor shall pay** the sum of **\$3,250.55** to the Trustee **on or before October 6, 2015** to be disbursed to unsecured creditors."

Confirmation Order, Dckt. 48 [emphasis added].

In making the contention that there was a "scrivener's error," Debtor offers no evidence. Rather, it is merely a contention now argued by Debtor's counsel. No attempt is made to explain whether the "scrivener's error" occurred: (1) when Debtor's counsel wrote down the proposed amendment in preparing for the hearing, (2) when Debtor's counsel stated the proposed amendment at the hearing, (3) when Trustee's counsel wrote down the proposed amendment at the hearing, (4) when the court stated the amendment agreed to at the hearing, (5) when the court wrote the Civil Minutes for the hearing, (6) when the court wrote and issue the order granting the motion and ordering the amendment, (7) when Debtor's counsel prepared the proposed confirmation order, (8) when the Chapter 13 Trustee's counsel approved the form of the proposed confirmation order, or (9) when the court issued the Order Confirming the Chapter 13 Plan.

Debtor has defaulted in the payment of the \$3,250.00 that was required to be paid by October 6, 2015. Debtor offers no testimony as to the location of those monies. Debtor offers no testimony in opposing the Motion to Dismiss, but merely the argument that there has been one or multiple scrivener's error(s).

Cause exists to dismiss this case. The Plan provided for payment of \$3,250.00 on October 6, 2015. There is no dispute that such payment has not been made by Debtor. Debtor has not shown that there is any error in the terms of the Plan as stated in the Order Confirming the Chapter 13 Plan, as well as the Order granting the Motion to Confirm and the Civil Minutes of the Court. Debtor has not sought to file a modified plan or seek relief from the multiple orders of this court stating the amendment.

The motion is granted and the case is dismissed.

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

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

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

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

107. [14-30278-E-13](#) GARY SHREVES AND KAREN MOTION TO DISMISS CASE
DPC-3 BAYSINGER- SHREVES 12-14-15 [[122](#)]
Mark Wolff

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

108. [14-26381](#)-E-13 THOMAS/BONNIE-JANE GREEN MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 12-17-15 [[25](#)]

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 - Opposition Filed.

Correct 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 December 17, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 17, 2015. Dckt. 25. The Trustee seeks dismissal due to the Debtor's delinquency and because the plan will complete in excess of 60 months.

Thomas and Bonnie Jane Green ("Debtor") filed an opposition to the instant Motion on January 7, 2015. Dckt. 31. The Debtor states that they will be current before the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,642.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 68 months due to the higher than planned unsecured claims. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

Further, Debtor does not offer evidence (or explanation) of the ability to make a payment of \$11,140.00 in one month (\$8,642.00 arrearage and \$2,498.00 current monthly payment) in light of Debtor having only \$2,776.10 in Monthly

Disposable Income to fund the Plan. Schedules I and J, Dckt. 1, providing financial information under penalty of perjury. Further, Debtor offers no evidence of where the \$8,642.00 has been spent or diverted.

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

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

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

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

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

109. [12-30483](#)-E-13 GARY/KIRSTEN SNYDER MOTION TO DISMISS CASE
DPC-2 Edward Smith 12-14-15 [[57](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Tentative Ruling: 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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 16, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

John Randy Hatten ("Debtor") filed for Chapter 13 relief on march 3, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 17. Trustee declares that Debtor is delinquent by \$3,726.55, which represents multiple months of Debtor's \$1,908.85 payment. Dckt. 19 ¶ 3.

At the October 14, 2015 hearing, the Debtor appeared at the hearing and stated that he had been in the hospital, and requested additional time to meet with counsel to address the defaults. Dckt. 21. The court continued the hearing to 10:00 a.m. on January 20, 2016. Dckt. 23.

To date, the Debtor has failed to file any subsequent papers.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is

\$3,726.55 delinquent in plan payments, which represents multiple months of the \$1,908.85 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

111. [11-22884-E-13](#) WENDEL/MARY APPERT MOTION TO DISMISS CASE
DPC-4 W. Steven Shumway 12-8-15 [[126](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy

Case is dismissed without prejudice.

112. [11-35484-E-13](#) WILLIAM/DIANE CATLETT MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 12-15-15 [[75](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

113. [14-32084-E-13](#) STEVEN/SHARON COLLINS
DPC-4 Brian Turner

MOTION TO DISMISS CASE
12-16-15 [[98](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). No opposition has been filed by Debtor or any other party in interest. The defaults of Debtors, and each of them, and the non-responding parties in interest are entered.

Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 98.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$11,349.00 delinquent in plan payments, which represents multiple months of the \$3,895.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 17, 2015. 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 the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Additionally, the Trustee asserts that the Debtor has refused to cooperate with the Trustee. The Debtor has not provided a full set of four years of tax returns. The Debtor only provided a copy of their 2013 tax return and appears to have not filed it with the Internal Revenue Service. Furthermore, the Trustee asserts that the Debtor failed to provided the Trustee with Business Documents including a questionnaire, two years of tax returns, profit and loss statement, bank account statements, nor proof of license and insurance. Lastly, the Debtor failed to report prior filings. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This is not Debtor's first or second recent bankruptcy filing. Three prior Chapter 13 cases (in which he was represented by the same attorney, but different from his counsel in the instant case) were filed and dismissed:

11-39280 Represented by Counsel	Filed August 5, 2011 Dismissed October 14, 2011	
	The case was dismissed on the Trustee's Motion, the grounds being Debtor not having filed all of the tax returns for the four year period preceding the commencement of the bankruptcy case. 11-39208 - Motion, Dckt. 28, and Order, Dckt. 43.	
11-46417 Represented by Counsel	Filed November 7, 2011 Dismissed July 3, 2013	
	The Trustee requested dismissal of the case due to the failure of the plan to sufficiently fund payments over no more than a 60 month period. The Debtor did not seek to amend or modify the plan, or provide for a plan which complied with the Bankruptcy Code. 11-46417 - Motion, Dckt. 56; Civil Minutes, Dckt. 61; and Order, Dckt. 63.	
14-25862 Represented by Counsel	Filed May 31, 2014 Dismissed November 3, 2014	

Debtor has failed to provide the Trustee with copies of tax returns as required by the Bankruptcy Code. Debtors also failed to disclose the 2011 bankruptcy filings on the current Petition. Dckt. 1; top of page 2 of Petition requiring disclosure of all cases filed in the prior eight years.

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

114. [15-20384-E-13](#) RANDAL MCKIM
DPC-2 Eric Schwab

MOTION TO DISMISS CASE
12-10-15 [[52](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 52.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,700.00 delinquent in plan payments, which represents multiple months of the \$2,900.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

115. [15-27384-E-13](#) PAUL/CYNTHIA RENDON
Mohammad Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-26-15 [[16](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Paul and Cynthia Rendon ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on October 26, 2015. The court computes that 86 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 October 21, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

116. [14-26385-E-13](#) PATRICIA SIMS MOTION TO DISMISS CASE
DPC-1 Helga White 12-8-15 [[56](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

117. [14-24786-E-13](#) LINDLEY FREEMAN MOTION TO DISMISS CASE
DPC-2 Sally Gonzales 12-8-15 [[30](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 8, 2015. Dckt. 30.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,215.00 delinquent in plan payments, which represents multiple months of the \$360.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a response to the instant Motion.

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

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

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

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

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

118. [15-27786](#)-E-13 RAJESH KAPOOR
Fred Ihejirika

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-7-15 [[38](#)]

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, 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 Rajesh Kapoor ("Debtor"), Trustee, and other parties in interest on December 7, 2015. The court computes that 44 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 December 1, 2015).

The court's decision is to sustain the Order to Show Cause and order the case dismissed.

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

119. [15-27786-E-13](#) RAJESH KAPOOR ORDER TO SHOW CAUSE - FAILURE
Fred Ihejirika TO PAY FEES
11-6-15 [[22](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rajesh Kapoor ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 6, 2015. The court computes that 75 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 November 2, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

120. [15-27786-E-13](#) RAJESH KAPOOR
DPC-2 Fred Ihejirika

MOTION TO DISMISS CASE
11-17-15 [[28](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2015. By the court's calculation, 64 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). 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, filed the instant Motion to Dismiss on November 17, 2015. Dckt. 28.

The Trustee asserts that the Debtor is not entitled to Chapter 13 relief because the Debtor is over the unsecured debt permitted by 11 U.S.C. § 109(e). This is grounds to dismiss the case. 11 U.S.C. § 1307(c)

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee further states that the Debtor has failed to pay filing fees, as evidenced by the three Order to Show Causes issued by the court. The failure to pay necessary fees is grounds to dismiss the case. 11 U.S.C. § 1307(c).

Lastly, the Debtor may have not filed the case in good faith and may have failed liquidation analysis. The Debtor is currently in a divorce proceeding where there is a judgment lien against the Debtor's residence and that the Debtor failed to report a prior Chapter 7 case. Additionally, the

Trustee states that there appears to be property in India that the Debtor failed to report.

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

121. [10-44687-E-13](#) DARYL/JOYCE STEWART
DPC-1 Timothy Walsh

MOTION TO DISMISS CASE
12-14-15 [[44](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

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 - Opposition Filed.

Correct 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 December 18, 2015. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 18, 2015. Dckt. 31. The Trustee seeks dismissal due to the Debtor's delinquency, failure to provide tax return, failed to provide proof of Social Security Number, and there is no pending plan.

Johnny and Melissa Robbins ("Debtor") filed an opposition to the instant Motion on January 5, 2016. Dckt. 42. Debtor states that:

(1) the Debtor has provided the 2014 tax return;

(2) the Debtor will prior to the hearing bring evidence of the social security card;

(3) that the Debtor has made plan payments to be current; and

(4) that the Debtor will file a modified plan on January 6, 2016.

The Trustee argues that the Debtor did not commence making plan payments and is \$620.00 delinquent in plan payments, which represents multiple months of the \$310.00 plan payment. 11 U.S.C. §1307(c)(4) permits the

dismissal or conversion of the case for failure to commence plan payments. The Debtor has failed to offer evidence that the delinquency has actually been cured.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 8, 2015. However, the Debtor filed an amended plan and Motion to Confirm on January 5, 2016. Dckt. 40. Therefore, pending confirmation, the Trustee's objection is overruled.

Moreover, Debtor states that they have provided the 2014 income tax return to the Trustee but failed to provide evidence that they have in fact done so. Furthermore, the Debtor has yet to provide evidence that the Debtor has provided evidence of their Social Security Numbers. This is grounds to dismiss the case. 11 U.S.C. § 1307(c).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

123. [15-21689-E-13](#) KELLY HAWKINS-DOUGLAS
DPC-1 Jeremy Heebner

MOTION TO DISMISS CASE
12-16-15 [[19](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2015. 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). 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). 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, filed the instant Motion to Dismiss on December 16, 2015. Dckt. 19.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,860.00 delinquent in plan payments, which represents multiple months of the \$2,295.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

124. [12-41091-E-13](#) REBECCA GAGE MOTION TO DISMISS CASE
DPC-5 Peter Macaluso 12-8-15 [87]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 8, 2015. Dckt. 87. The Trustee seeks dismissal due to the Debtor's delinquency.

Rebecca Gage ("Debtor") filed an opposition to the instant Motion on January 5, 2016. Dckt. 91. The Debtor states that she will be current on or before the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$675.00 delinquent in plan payments, which represents multiple months of the \$225.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

125. [13-26191](#)-E-13 WANDA MOORE MOTION TO DISMISS CASE
DPC-3 Peter Macaluso 12-10-15 [[53](#)]

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 10, 2015. Dckt. 53. The Trustee seeks dismissal due to the

Debtor's delinquency.

Wanda Moore ("Debtor") filed an opposition to the instant Motion on January 5, 2016. Dckt. 57. The Debtor states that she will be current on or before the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,720.00 delinquent in plan payments, which represents multiple months of the \$1,910.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor offers no evidence in opposition to the Motion, merely the statement by counsel. Further, no evidence has been provided of payment having been made to cure the arrearage.

Finally, Debtor provides no evidence as to how Debtor can make three monthly plan payments (\$3,720.00 arrearage and \$1,910.00 current monthly payment) on her limited Net Monthly Income and Projected Disposable Income of \$1,718,93. Declaration, Dckt. 34; and Exhibits stating Income and Expenses (using Schedule I and J forms), Dckt. 35

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

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

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

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

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

126. [14-24791-E-7](#) JACQUELINE EVORA
DPC-2
CASE CONVERTED: 01/06/2016

MOTION TO DISMISS CASE
12-8-15 [[24](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, 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.**

127. [15-26491-E-13](#) ROGER SINER
DPC-2

MOTION TO DISMISS CASE
12-18-15 [[36](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

128. [15-27295-E-13](#) ERROL/ALITA MERCADO
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-21-15 [[42](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Errol and Alita Mercado ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 21, 2015. The court computes that 30 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 December 16, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

129. [15-22596-E-13](#) JUSTIN VILLANUEVA
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
12-14-15 [[20](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 7, 2015. Dckt. 22. The Trustee seeks dismissal due to the Debtor's delinquency and no plan being filed following the denial of confirmation of the Debtor's previous plan.

Howard Thomas ("Debtor") filed an opposition on January 7, 2016. Dckt. 33. The Debtor states that the Debtor has filed a plan set for hearing on February 23, 2016 which would cure the delinquency. The Debtor states the delay was due to the Debtor's spouse looking for a job and being only a temporary employee.

Christina Lloyd, an employee of the Trustee, filed a subsequent declaration on January 12, 2016. Dckt. 36. Ms. Lloyd states that the proposed plan still does not cure the delinquency and that the Debtor would still be delinquent.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,245.00 delinquent in plan payments, which represents multiple months of the \$1,945.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 24, 2015.

Debtor a Second First Amended Plan which states that the Plan payments through January 25, 2016 are \$4,880.00, and the Debtor will then make 56 additional payments of \$2,100.00 each beginning February 25, 2016. Dckt. 40.

The Trustee reports that as of January 12, 2015, Debtor had paid \$3,387.00 into the Plan. Declaration, ¶ 4; Dckt. 36.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 38, 41. The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) upon which confirmation is requested pursuant to 11 U.S.C. §§ 1325 and 1322. Rather, the "grounds" stated with particularity upon which confirmation are based are:

- A. Debtor has been informed by Trustee that the First First Amended Plan fails to sufficient fund payments to creditors.
- B. Therefore, Debtor needs to file a Second First Amended Plan.
- C. Debtor is using the Chapter 13 Plan form required in the Eastern District of California.
- D. Debtor has paid all fees required to be paid before confirming a plan.
- E. The basis (apparently the grounds) are not stated in the Motion, but under penalty of perjury as testimony by Debtor.
- F. Based on the Schedules filed by Debtor (though not alleged as an actual fact), Creditors will receive as much through the Chapter 13 Plan as through a Chapter 7 liquidation.
- G. Secured creditors (of all kind, nature, and strip) will generically retain their lien until creditor is paid or the plan completed (indicating that any or all creditors may lose their lien merely by completion of the Plan).
- H. Just prior to the First Meeting of Creditors, Debtor's spouse found a job.
- I. That job was through a temporary employment agency.
- J. The job ended and Debtor's spouse is again unemployed.
- K. Debtor has submitted evidence that he will be able to complete the plan (though Debtor does not make any allegation of ability to perform the plan).
- L. Debtor does not have any domestic support obligations.
- M. Debtor has filed all required tax returns.

N. Debtor requests the court confirm the plan.

Motion, Dckt. 38. The above fails to state sufficient grounds for confirmation pursuant to 11 U.S.C. §§ 1325 and 1322. While the pleading for a motion to confirm a plan can be somewhat rote and can follow the statute, this does not. In reality, Debtor tells the court to ignore Rule 9013 and read other pleadings, pick out what the court believes should be stated as grounds for Debtor, and then assemble the multiple documents into a "Franken-Motion."

The Debtor's "testimony" in his Declaration is a partial cut and past of the Motion. All he is able to provide for testimony is:

- A. He is the Debtor in this case.
- B. The Chapter 13 Trustee has informed Debtor that his plan is not sufficiently funded.
- C. Based on that, Debtor testifies that he needs to file an amended plan.
- D. Current household income and expenses are listed on Schedule I and J, which are provided as exhibits.
- E. While having a temporary job, Debtor's wife is now unemployed.
- F. Debtor filed bankruptcy to catch up on payments on his house.
- G. Debtor does not have a domestic support obligation.
- H. Debtor has filed all applicable tax returns.

Declaration, Dckt. 41. This fails to provide the minimal evidence for the court to confirm a plan pursuant to 11 U.S.C. §§ 1325 and 1322. Debtor fails to provide testimony as to his actual income and expenses, but merely testifies that forms for Schedules I and J are filed as an exhibit. When compared to the original schedules filed in this case, there are difference.

Original Schedule I lists income of \$4,350.98 a month. Dckt. 1 at 29. This includes Social Security income of \$1,313.00 for the non-Debtor spouse and \$752.00 of unemployment income. No information is provided for how long such unemployment income will continued. The same information is provided on the Exhibit Schedule I form filed with the Motion. Dckt. 42 at 2-3.

On Original Schedule J Debtor lists not only his spouse, but four adult sons, ages 18-24 as "dependants." No information is provided as to why these four adult men are dependants and what income they are generating for this household. After expenses (\$4,350 a month for Debtor, spouse, and four adult male dependants), Debtor states on Original Schedule J that he has \$1,270 of Net Monthly income. Dckt. 1 at 31-33.

While the Plan provides for making a mortgage payment for Debtor's residence, Schedule J states that over the five year plan period there will be \$0.00 for "home maintenance, repair, and upkeep." *Id.* at 31.

While on Schedule B Debtor lists owning three vehicles (two cars and a motorcycle), on Schedule J Debtor lists only \$300 a month for transportation (gas, maintenance, registration) and \$200 a month for insurance.

On the Schedule J form used as an Exhibit, Debtor states that he now has \$2,328.98 in Monthly Net Income. This increase appears to in large part be due to not including the mortgage payment as an expense in light of it being paid through the Plan. But one of the Debtors four dependant adult sons disappears, without explanation, from this Schedule J form. Exhibit, dckt. 41 at 4. Debtor continues to state that he has no home maintenance expenses, and that the transportation cost for the three vehicles is only \$300 a month and the insurance for the three vehicles (which include a motorcycle) is only \$200 a month. The Debtor offers no evidence to show the court that this information is credible.

While filing documents titled motion and declaration, Debtor has failed to prosecute this case. The "motion" fails to comply with Federal Rule of Bankruptcy Procedure 9013. Further, the "declaration" offers little, if any, relevant personal knowledge testimony. Fed. R. Evid. 602.

Debtor is not prosecuting this case.

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

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

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

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

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

131. [15-28199](#)-E-13 CHANCE/MICHELE PETERSON
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-28-15 [[21](#)]

Final Ruling: No appearance at the January 20, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Chance and Michele Peterson ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 28, 2015. The court computes that 23 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 December 21, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The court's docket reflects that the default in payment which 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 case shall proceed in this court.

132. [11-20572-E-13](#) JOHANNES GIORGISE
WW-8 Mark Wolff

CONTINUED MOTION FOR ORDER
AUTHORIZING TRUSTEE TO RELEASE
FUNDS
12-18-15 [[284](#)]

No Tentative Ruling: The Motion for Order Authorizing Trustee to Release Funds 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 - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2015. By the court's calculation, 25 days' notice was provided. 28 days' notice is required.

The Motion for Order Authorizing Trustee to Release Funds 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Order Authorizing Trustee to Release Funds is XXXXXXXXXXXXXXXXXX.

Johannes Giorgise ("Debtor") filed the instant Motion for Order Authorizing Trustee to Release Funds on December 18, 2015. Dckt. 284.

The Debtor is seeking the court to authorize the remaining sale proceeds from sale of Debtor's residence and authorize Debtor to cure the default on the mortgage on the rental property the Debtor is seeking to now make his primary residence.

The court on October 7, 2015 authorized that \$13,300.00 of the sale proceeds released to Debtor to pay for limited moving expenses. Dckt. 283.

David Cusick, the Chapter 13 Trustee, filed a reply to the instant Motion on December 29, 2015. Dckt. 296. The Trustee states that the Trustee

filed a Motion to Modify the Plan which is set for hearing at 3:00 p.m. on February 2, 2016. The Trustee states that if the instant Motion is granted, it will effectively deny the Trustee's Motion to confirm a modified plan. The Trustee requests that the Motion be continued to be heard in conjunction with the Motion to Modify.

The Trustee argues that the proceeds the Debtor seeks to obtain are non-exempt proceeds from the sale of the real property. Further, there is no confirmed plan providing for payment of these non-exempt assets to the creditor as sought by Debtor.

JANUARY 12, 2016 HEARING

The court continued the hearing to 10:00 a.m. on January 20, 2016. Dckt. 300.

DISCUSSION

To date, no supplemental papers have been filed.

The grounds stated with particularity in the Motion (Fed. R. Bankr. P. 9013) are:

- a. On November 21, 2012, Debtor filed a second modified plan changing the classification of the claims secured by Debtor's residence and rental properties from Class 1 to Class 2 based on there being loan modifications.
- b. Though not stated in the Motion, the Second Modified Plan was confirmed by order of the court filed on February 7, 2012. Dckt. 210.
- c. Since "filing" the Second Modified Plan, Debtor was served with dissolution pleadings and has been ordered to pay \$2,700 a month in child and spousal support.
- d. In August 2015 Debtor filed a motion for authorization to sell his residence because he was no longer able to make the monthly payments.
- e. The court granted that motion and authorized the Debtor to sell the residence, but ordered that the sales proceeds be held by the Chapter 13 Trustee.
- f. As noted by the court in the Civil Minutes for the hearing on the motion for authorization to sell the residence, Debtor has not claim an exemption in the residence. Dckt. 273.
- g. In October 2015, Debtor requested that the court authorize the Trustee to disburse a portion of the net sales proceeds to Debtor to pay his personal housing expenses through the remaining term of the Plan (the sixtieth month of the Plan being February 2016).
- h. The court authorized the Trustee to disburse \$13,300.00 to

Debtor and ordered the Trustee to apply \$3,500.00 of the proceeds to the Chapter 13 Plan.

- i. Debtor has \$2,500.00 of the \$13,300.00 disbursed by the Chapter 13 Trustee remaining.
- j. Debtor has evicted the tenant from the rental property and now desires to make it the Debtor's residence.
- k. Debtor asserts that he has spent over \$6,000 making repairs to the rental property, as well as other work, such as painting, which he has done himself.
- l. The court's order authorizing the disbursement of the \$13,300 by the Trustee restricted to use of those monies for purposes which do not include any of the repairs to the rental property.
- m. Debtor has fallen behind on the payments on the Class 4 debt secured by the rental property. The Motion asserts that this occurred because the tenant in the property did not pay rent for six months.
- n. On September 29, 2015 a notice of default was filed by the creditor holding the claim secured by the rental property.
- o. Debtor asserts that the remaining monies, in an unstated amount, are necessary for his "financial rehabilitation."
- p. Debtor states that his net income is \$5,545 and that his expenses are essentially unchanged since filing Supplemental Schedule J on October 6, 2015, with the exception that the support payments have increased to \$2,700 (from the \$2,200 listed on Supplemental Schedule J).

Motion, Dckt. 284.

On Supplemental Schedule I Debtor states that his gross income is \$8,535.84. Dckt. 281. Deductions from this gross income include: (1) \$303.80 voluntary contribution for retirement; and (2) \$323.87 for repayment of a 401K loan (effectively paying Debtor himself the money). After withholding, the voluntary retirement contribution, and repaying his 401K loan, Debtor states that he has \$5,545.39 in monthly take-home income.

On Supplemental J Debtor lists \$4,240 (which includes \$100 for electricity/gas; \$50 for water, sewer, garbage; \$150 for phone/cell phone, and \$100 for internet, cable) in monthly expenses (after excluding the rental property expenses). *Id.*

The information from Schedules I and J indicate that Debtor has at least \$1,305.39 in projected disposable income.

The confirmed Second Modified Plan now in effect in this case requires monthly payments of \$585.91, based on how Debtor computed his projected disposable income in 2013. Exhibits 5 and 6, Dckt. 177.

The Trustee has now proposed a Third Modified Plan. Dckt. 290. In addition to the \$585.91 a month in plan payments, the proposed Third Modified Plan provides for a lump sum payment of \$67,894.50, the remaining sales proceeds held by the Trustee from the sale of the residence.

The Trustee reports that under the Plan, the Trustee disbursed plan payments totaling \$47,983.63 as payments to the creditor having the claim secured by the property which was sold, from which the Trustee is holding \$67,894.50 in remaining sales proceeds.

The proposed Third Modified Plan filed by the Trustee provides for at least a 12% dividend to Class 7 creditors holding general unsecured claims. Under the Debtor's confirmed Second Modified Plan Class 7 creditors holding general unsecured claims were promised only a 0.00% dividend.

The Debtor did not provide sufficient notice of the instant Motion. The Debtor's proof of service states that the Motion and accompanying papers were served on December 18, 2015. That is 25 days notice. The Debtor's Notice of Hearing states that written opposition is required and that the Motion is being made pursuant to Local Bankr. R. 9014-1(f)(1). A motion made under Local Bankr. R. 9014-1(f)(1) requires a minimum of 28 days notice. Here, the Debtor did not provide the sufficient notice.

Further, grounds have not been shown as to why the court would order the Trustee to turn over \$67,894.50 in estate monies in which no exemption has been claimed by Debtor. While Debtor would like to get the money, it is not consistent with the Bankruptcy Code.

It appears to the court that the current situation may not be an all or nothing proposition for the parties. The Trustee reports that "creditors" made \$47,983.63 in payments to the creditor holding the claim secured by the residence. Those payments preserved the residence which resulted in the Trustee receiving \$84,694.50 in sales proceeds (of which \$13,300 has already been disbursed to the Debtor and \$3,500 paid into the plan).

The Trustee and Debtor can address the issues of what moneys could, or should, properly be disbursed to Debtor and what moneys should be paid into the plan from the non-exempt sales proceeds.

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 for Order Authorizing Trustee to Release Funds filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is ~~XXXXXXX~~.