

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

**April 20, 2016 at 10:00 a.m.**

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1.	<a href="#"><u>15-27005-E-13</u></a>	MICHELLE CAMPAU	MOTION TO DISMISS CASE
	DPC-1	Ricard Jare	3-18-16 [ <a href="#"><u>40</u></a> ]

**FOR PURPOSES OF THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS, THE COURT SUSPENDS FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A).**

**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.**

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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 March 18, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 40. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

**DEBTOR'S OPPOSITION**

**April 20, 2016 at 10:00 a.m.**

**- Page 1 of 107 -**

Michelle Campau ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 44. The Debtor states that:

"As part of this opposition, the Declaration of the Debtor and the 1<sup>st</sup> modified plan filed herewith are incorporated as part of this opposition."

In substance, Debtor fails, refuses, or just elects not to assist the court by stating in clear, precise words her opposition. Instead, Debtor and Debtor's counsel directs the court to read other pleadings and to "state the best possible opposition that the court can write for Debtor." This is not effective, or proper, pleadings. It is not the court's role to write pleadings for one party against the other.

Debtor elects not to tell the court what a proposed modified plan provides, or how promising to modify the plan in the future is an effective opposition to the current Motion. The Trustee's Motion is based on Debtor being in default of three (and now possibly more) Plan payments.

Debtor has filed a declaration as part of the "Opposition." Declaration, Dckt. 45. The Declaration states that Debtor lost her job at some unspecified time. In the paragraph making this statement, Debtor states under penalty of perjury:

"2. I was unable to pay the trustee as soon as I lost my job. I was NOT entitled any substantial unemployment benefits. The benefits were \$ None ??? per week."

Declaration, ¶ 2, *Id.* The court is at a loss to understand now the Debtor makes a statement under penalty of perjury stating that benefits were "& \$\$\$\$\$\$."

Debtor further states that she has obtained a temporary job, making \$13 an hour, which is less that she made before. Debtor offers no testimony as to whether this is a full time or part time job, how many hours she is working, or her monthly income. She further stating that her sister is "helping out" until Debtor can get a better job. No specifics are provided as to what consist of "helping out" and no declaration is provided for the sister.

## **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$660.00 delinquent in plan payments, which represents multiple months of the \$220.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

On April 12, 2016, the Debtor filed a proposed modified plan and Motion to Confirm, which is set for hearing at 3:00 p.m. on May 24, 2016. The "Opposition" makes no reference to a modified plan somehow curing the default or being the basis for a valid, bona fide, good faith, consistent with Federal Rule of Bankruptcy Procedure 9011 opposition to the present motion. In her Declaration, the best Debtor can do is vaguely state:

"1. I'm filing a modified plan today as a response to the motion to dismiss."

Declaration, ¶ 1, Dckt. 45. It appears that Debtor has no knowledge of that "plan," what such "plan" proposes, of how she intends to cure the defaults.

Debtor and Debtor's counsel have ignored providing to the court any information about how a proposed modified plan can address the defaults. There are several possible alternatives. First, it was not worth Debtor's counsel's time (or it will be more profitable for counsel) to have the court read the other pleadings and state how a modified plan might conceivably be the basis of an opposition to the motion.

Second, Debtor and Debtor's counsel know that there is no bona fide, good faith opposition to the Motion, and are seeking to mislead the court merely to obtain delay for the sake of delay. Third, Debtor and Debtor's counsel may want the case dismissed, with the Debtor getting a new five years to restructure debt. But Debtor and Debtor's counsel do not want to make it appear a voluntary dismissal, so are structuring an "Opposition" which Debtor's counsel knows will be insufficient.

Whatever the reason, the "Opposition" filed by Debtor fails to provide an opposition to the present Motion. Even considering the present Declaration, Debtor provides no actual information about income, her expenses, the required support from family, and how Debtor will address the defaults.

Cause exists to dismiss the case. The Motion is granted and the Chapter 13 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 Chapter 13 case is dismissed.

2. [15-28199](#)-E-13 CHANCE/MICHELE PETERSON MOTION TO DISMISS CASE  
DPC-1 Richard Jare 3-16-16 [[30](#)]

**FOR PURPOSES OF THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS, THE COURT SUSPENDS FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A).**

**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.**

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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 March 16, 2016. 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). Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that the Debtors are \$6,046.00 delinquent in plan payments, which represents multiple months of the \$3,100.00 plan payment. Trustee notes, prior to the hearing on this matter, another payment of \$3,100.00 will come due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR'S OPPOSITION**

Chance and Michelle Peterson ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 34. The Debtor states that:

"As part of this opposition, the Declaration of the Debtor and the 1<sup>st</sup> modified plan filed herewith are incorporated as part of this opposition."

In substance, Debtor fails, refuses, or just elects not to assist the court by stating in clear, precise words her opposition. Instead, Debtor and Debtor's counsel directs the court to read other pleadings and to "state the best possible opposition that the court can write for Debtor." This is not effective, or proper, pleadings. It is not the court's role to write pleadings for one party against the other.

Debtor elects not to tell the court what a proposed modified plan provides, or how promising to modify the plan in the future is an effective opposition to the current Motion. The Trustee's Motion is based on Debtor being in default of three (and now possibly more) Plan payments.

Debtor has filed a declaration as part of the "Opposition." Declaration, Dckt. 35. The Declaration states that Debtor Michelle Peterson is a "realtor" and her commissions have been sporadic, leading Debtor to default in the Plan payments. Debtor anticipates some sales closing in April and May 2015, so Debtor believes that the defaults can be cured with one big lump sum payment in May 2015 in open court.

Debtor also states under penalty of perjury that Debtor had an extraordinary expense of \$2,500.00 to get tax returns prepared. Debtor has not explained how such a large expense was "unexpected" in this bankruptcy case that was filed on October 21, 2015. The Plan was not confirmed until February 21, 2016, well into tax season. Order, Dckt. 29.

The ink on the order confirming the plan was barely dry and the Chapter 13 Trustee filed the Motion to Dismiss on March 16, 2016. As of the March filing, Debtor was in default for the January and February 2016 plan payments. Though substantially in default, Debtor took no action to address the default - until forced to by the current Motion to Dismiss.

In looking at the proposed Modified Plan (Dckt. 36) and Motion to Confirm (Dckt. 38), the Modified Plan skips payments, then has a \$6,200.00 payment in May 2016, then payments of \$3,100.00 for seven months, and then a step-up in payments to \$3,500.00 for the remaining forty-six months of the Plan.

Debtor has demonstrated that Debtor cannot make the \$3,100.00 a month payments and has offered no evidence to support a contention that in seven months Debtor can make an even greater monthly payment. See Declaration, Dckt. 37.

Debtor and Debtor's counsel appear to have a very cavalier attitude toward bankruptcy and the obligations arising under a bankruptcy plan. Further, mere promises of larger payments are of little value without some evidence for the court to find that such statements (from Debtor who has already defaulted on the original promised payments) credible. They are not credible in this case.

Debtor has very little invested in this bankruptcy case. Debtor has demonstrated that Debtor cannot perform the plan in this case. Dismissal of this case is of little prejudice to Debtor. If Debtor can put together a plan which Debtor can perform, Debtor can file a new bankruptcy case. Debtor can then propose a plan Debtor can perform, and not merely promise that the current defaults can be cured in a lump sum in the future and that future payments will somehow increase.

### Review of Debtor Finances

Debtor states under penalty of perjury having \$9,595.60 a month in gross income. Of this, only \$2,000.00 is Debtor's Michelle Peterson's real estate income. Schedule I, Dckt. 1 at 29. Debtor Chance Peterson's income is from the Sacramento City Unified School District.

For Debtor Michelle Peterson, her gross income is reduced by \$900.00 a month, leaving, \$1,100.00, before taxes, to contribute to the plan payments. Debtor Michelle Peterson also states she has \$1,000.00 a month in come from "Kyani Distributor." Schedule I, *Id.* Again, this is before her self-employment and income taxes.

On Schedule J, Debtor's list having (\$3,722.26) in expenses. *Id.* at 31-32. When subtracted from the monthly take-home income, Debtor purports to have \$3,100.00 a month to fund a plan. Debtor Michelle Peterson's real estate income expense is at best \$1,000.00 of this amount, and probably less after taking into account self-employment and income taxes.

The proposed Modified Chapter 13 Plan allocates the \$3,100.00 a month payments as follows:

- A. Chapter 13 Trustee.(Est. 7%).....(\$ 217.00)
- B. Debtor's Counsel.(\$2,801.00 total).....(\$ 46.70)
- C. Class 1, Mortgage
  - 1. Current Payment.....(\$2,178.88)
  - 2. Arrearage Cure.....(\$ 265.70) FN.1.
- D. Class 2 Secured by 2014 Mercedes Benz.....(\$ 700.00) FN.2.
- E. Franchise Tax Board (\$13,174.27 Disputed)....(\$ 50.00)  
undisputed portion Class 5.
- F. Employment Development Department.....(\$ 135.00) FN.3.  
Class 5.
- G. Class 6 Unsecured Claim (Hyundai Lease).....(\$ 300.00) FN.4.
- H. Class 7 Unsecured Divided..... 0.0%

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FN.1. Debtor purports to not make an equal monthly payment for the arrearage, but delay beginning it more than a year. It appears that this delay is intended to coincide with the unsupported increase in plan payments. The court does not so speculate and includes it as a current plan payment to be made in

equal installments.

FN.2. For the claim secured by the 2014 Mercedes Benz, the Plan does not provide for equal payments, but a discounted payment of \$475.00, with it to increase to \$700.00 a month in month 15 of the plan. Again, this appears to be based on the unsubstantiated ability of Debtor to have more income in the future. The court uses the full payment in considering the dismissal of this case.

FN.3. Clearly Debtor has some significant tax payment issues. This highlights the shortcomings in Debtor's expenses which have no self-employment or income taxes (other than a possible \$100 a month) for Debtor Michelle Peterson's income, which is stacked on the substantial income of the co-Debtor.

FN.4. It appears that this lease payment of \$300 for 2013 Hyundai Sonata is included in the Schedule J computation.

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Not including the \$300.00 a month Hyundai lease payment, the Debtor's monthly plan payment amounts total \$3,593.28, well in excess of the current defaulted \$3,100.00 monthly payment and less than the unsubstantiated future promised \$3,500.00 payment.

Debtor has demonstrated that Debtor cannot perform this Plan, having already defaulted. Though well aware of the default, Debtor and Debtor's counsel did not act proactively, but waited until the Trustee filed the Motion to Dismiss. Such was their prerogative, but that does not excuse the default. Additionally, it does not relieve Debtor of presenting the court with some colorable, good faith, reasonable course of conduct to diligently prosecute this bankruptcy case.

Debtor has failed to do so. Debtor's financial information under penalty of perjury does not support being able to perform the plan. Additionally, given Debtor Michelle Peterson's marginal contribution to the \$3,100.00 a month payment, no reason has been shown for Debtor not being able to make at least a \$2,100.00 payment or explain where the portion of the payment not attributed to Debtor Michelle Peterson has been diverted.

Cause exists to dismiss the case. The Motion is granted and the Chapter 13 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. [13-31632](#)-E-13 JANELLE GILMORE MOTION TO DISMISS CASE  
DPC-4 Peter Macaluso 3-18-16 [[104](#)]

**FOR PURPOSES OF THE CHAPTER 13 TRUSTEE'S MOTION TO DISMISS, THE COURT SUSPENDS FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A).**

**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.**

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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 March 18, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 104. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

**DEBTOR'S OPPOSITION**

Janelle Gilmore("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 75. The Debtor states that she will file, set, and serve a proposed plan prior to the hearing.

**DISCUSSION**

To date, no proposed plan nor Motion to Confirm have been filed.



The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,140.00 delinquent in plan payments, which represents multiple months of the \$570.00 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. Though stating that a modified plan would be filed, Debtor offers no explanation as to what caused the default and how Debtor intends to proceed. Debtor failed, or refused, to provide a declaration in opposition to the Motion to Dismiss. Rather, Debtor's counsel merely filed a one-line opposition promising a modified plan would be filed.

### **Proposed Modified Plan**

Debtor has filed a proposed Modified Plan and Motion to Confirm. In the Motion, it is alleged that at some unspecified time after the December 30, 2013 confirmation of the Plan, Debtor's purse was stolen. In that purse was a money order for \$570.00 for Debtor's bankruptcy payment. Though purportedly for the bankruptcy payment, the money order was "blank," allowing the thief to cash it. Though the Money Order company identified the person who cashed the blank Money Order, it would not pay the money back to Debtor. Motion, Dckt. 110. The Motion further alleges that at some unspecified time Debtor's rent went up and Debtor also had to pay a water charge. Further, at some unspecified time Debtor's roommate moved out, leaving Debtor to have to pay more of the housing expense.

Debtor's declaration restates the allegations in the Motion (word-for-word), not stating when the alleged theft occurred or why Debtor was carrying a "blank" money order. Declaration, ¶ 2; Dckt. 113. Neither the Declaration nor the Motion provide any information about a report of the alleged theft being reported and no copy of a police report is provided to the court.

### **Multiple Plan Modifications**

Though Debtor's Original Plan was confirmed in December 2013, in October 2014, Debtor confirmed a Modified Plan. Order, Dckt. 80. At that time, Debtor needed to modify the confirmed plan because: (1) rent was increased twice and (2) child support payments were not timely received. Motion, Dckt. 71.

Then in September 2015, Debtor came back to modify the plan a second time. This time, Debtor explained that she fell behind in her payments because: (1) she was in a car accident and had to pay the deductible, (2) had to pay "rental," and (3) had to pay health expenses. Motion, Dckt. 89. In her Declaration, Debtor added that her rent had once again "increased on short notice." Declaration, ¶ 2; Dckt. 92.

### **DISMISSAL OF CASE**

While Debtor has filed yet another modified plan, and yet another motion to confirm modified plan, and yet another declaration to support confirmation of yet another modified plan, Debtor and Debtor's counsel are short on specifics. No explanation is provided as to why Debtor was walking around with a Money Order with the payee left blank when it was specifically a payment for the bankruptcy trustee. Debtor once again is facing a "surprise"

rent increase.

For the latest motion to modify the modified Chapter 13 Plan, Debtor offers no current financial information. The Debtor did provide updated financial information in support of the September 2015 modification. For income, Debtor reports having \$3,628.00 in gross income working for the State of California. Income Exhibit 2, Dckt. 93. Debtor reports receiving an additional \$400.00 a month in family support payments, giving her a gross monthly income of \$4,628.00. After withholding for taxes, mandatory retirement contribution, and insurance, Debtor's monthly take-home income is \$3,077.83.

Debtor's family unit is two persons (Debtor and a minor child), for which she purports to have monthly expenses of (\$2,507.68. Debtor's rent expense is \$1,050.00). After the remaining expenses, Debtor purports to have \$570.15 a month net income to fund a plan. As with prior plans, and defaults, that has turned out not to be the case.

In obtaining confirmation through the September 2015 motion to modify, Debtor never stated that she had anyone else contributing to the housing expense. Debtor listed a rent expense of (\$1,050.00). No contributions to any expenses were disclosed.

The present Motion to Dismiss is not due to there being merely one missing payment (the alleged purse theft), but there being three payments in default.

Debtors proposed "cure" is to have the most recent \$1,710.00 in defaults "forgiven" and then Debtor to again make payments of \$570.00 for thirty months (the balance of the plan). In addition to these three months of defaulted plan payments, the September 2015 modification provided for forgiving three months of defaulted plan payments. Motion, ¶ 5; Dckt. 89. For the August 2014 modification, Debtor provided for two months of defaulted payments be forgiven. Motion, ¶ 5; Dckt. 71.

Debtor has defaulted in, and been forgiven, eight of the thirty plan payments which have become due. Debtor is running at a 27% default rate in this bankruptcy case.

Debtor has demonstrated that, for whatever reason, she cannot perform a Chapter 13 Plan. Time and again Debtor has had "reasons" why she had to default. The present, vague, "my purse was stolen with the Trustee's blank Money Order in it" is suspect. Debtor has been hit with multiple "surprise" rent increases. Debtor now has been "surprise" by losing a heretofore undisclosed roommate who was purported to have been paying some of the housing expenses.

Possibly what is underlying the repeated defaults is that Debtor is engaging in a practice branded as "liar declarations," in a debtor (with the assistance of his or her attorney) knowingly and actively misrepresent the amount of that debtor's expenses to create the illusion of feasibility. Given that Debtor has defaulted 27% of the time in this bankruptcy case, it may be that she does not have, and her attorney is not making her, be honest about her real expenses.

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 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).**

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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 (pro se) and Office of the United States Trustee on April 6, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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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<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 6, 2016. Dckt. 28. The Trustee seeks dismissal on the following grounds:

1. Failed to appear at the First Meeting of Creditors.
2. Debtor has failed to make plan payments to date.
3. Debtor failed to provide tax return.

4. Debtor has failed to provide evidence of the Debtor's income.

The Trustee argues that the Debtor did not commence making plan payments and is \$539.75 delinquent in plan payments. 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).

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 has not responded 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.

5. [15-29301](#)-E-13 CONNELL JOHNSON  
Mohammad Mokarram

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-4-16 [[48](#)]

**Final Ruling: No appearance at the April 20, 2016 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Connell Johnson("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 4, 2016. The court computes that 47 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$2.00 due on February 29, 2016).

<p><b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b></p>
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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. [12-25302](#)-E-13 MONIQUE KIZER  
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE  
3-18-16 [[43](#)]

**Final Ruling: No appearance at the April 20, 2016 hearing is required.**  
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The Chapter 13 Trustee having filed a Notice of Withdrawal on April 13, 2016, Dckt. 49, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 49, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

7. [15-22802-E-13](#) LATEESHIA BOOTH  
DPC-1 Matthew DeCaminada

MOTION TO DISMISS CASE  
3-18-16 [[22](#)]

**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.**

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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 March 18, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 22. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### **DEBTOR'S OPPOSITION**

LaTeeshia Myenia Booth ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 26. The Debtor states that she will be current prior to the hearing.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$480.00 delinquent in plan payments, which represents multiple months of the \$160.00 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.

8. 13-28203-E-13 LANCE/LISA MCKINNEY MOTION TO DISMISS CASE  
DPC-3 Jason Borg 3-16-16 [83]

**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.**

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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 March 18, 2016. 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).

<b>The court's decision is to <del>xxxxxx</del> the Motion to Dismiss.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 83. The Trustee seeks dismissal because of the

Debtor's delinquency in plan payments.

#### **DEBTOR'S OPPOSITION**

Lance and Lisa McKinney ("Debtor") filed an opposition to the instant Motion on April 12, 2016. Dckt. 87. The Debtor states that the main source of income has been the Debtor's painting business. The Debtor asserts that 2016 has been difficult because customers have been making their payments late. The Debtor asserts that he will be able to bring the plan current by the time of the hearing.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,060.00 delinquent in plan payments, which represents multiple months of the \$530.00 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.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxx**.

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

9. [14-29404](#)-E-13 CYNTHIA GREEN  
DPC-2 Gary Greule

MOTION TO DISMISS CASE  
3-16-16 [[58](#)]

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

10. [15-29404](#)-E-13 TAEVONA MONTGOMERY  
DPC-2 Richard Jare

MOTION TO DISMISS CASE  
3-14-16 [[54](#)]

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

11. [15-28605-E-13](#) JODY/JOY SILVA  
DPC-2 Michael Croddy

MOTION TO DISMISS CASE  
3-23-16 [[50](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 23, 2016. 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 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 March 23, 2016. Dckt. 50.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,704.00 delinquent in plan payments, which represents multiple months of the \$4,704.00 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 filed a response nor have they 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. [15-29806-E-13](#) JOHN HOLLIS  
DPC-3 Michael DeDecker

MOTION TO DISMISS CASE  
3-16-16 [[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.**

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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 March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 48. The Trustee seeks dismissal due to the Debtor's delay in filing a new plan.

#### **DEBTOR'S OPPOSITION**

John Hollis ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 55. FN.1. The Debtor states that the reason for the delay was to provide the Debtor time to gather required documentation and is filing an amended plan.

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FN.1. The court notes that the Debtor appears to have been erroneously filed the opposition twice. Dckt. 55 and 56. In light of the oppositions being identical, the court references Dckt. 55.

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## DISCUSSION

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 March 1, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers an explanation for the delay in setting the Plan for confirmation but no plan has yet to be filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

A review of the docket shows that no proposed amended plan nor Motion to Confirm have been filed to date.

### Multiple Prior Bankruptcy Filings and Dismissals

This is not the Debtors, first, second, or even third bankruptcy filing in the last few years. A survey of Debtor's recent bankruptcy cases includes the following information:

12-33383 Chapter 13 Case Atty: Michael DeDecker	Filed: July 7, 2012  Dismissed: September 15, 2015	
	1. Case dismissed due to Debtor's default of \$450.00 (\$150 a month plan payment), with no opposition to Trustee's motion to dismiss filed. Civil Minutes; 12-33383, Dckt. 181.  2. The Chapter 13 Plan confirmed in Case 12-33383 provided only for plan payments made to two creditors for claims secured by vehicles (one as co-signor for granddaughter's car), with no other payments to creditors made by Debtor. Plan, Dckt. 136; Civil Minutes, Dckt. 143; <i>Id.</i>	
12-26199 Chapter 13 Case Atty: Peter Macaluso	Filed March 29, 2012  Dismissed: July 19, 2012	

	<p>1. Case dismissed due to Debtor's failure to pay \$624.71 as required under the proposed Chapter 13 Plan. Additionally, Debtor failed to file the required certificate of credit counseling. Civil Minutes, Dckt. 63; 12-26199.</p> <p>2. Proposed Chapter 13 Plan required \$150.00 a month plan payments. Dckt. 53, <i>Id.</i> Only two secured claims were to be paid, which were the same two claims as stated in case 12-33383. Dckt. 53, <i>Id.</i></p>	
11-43792 Chapter 13 Case Atty: Joel M. Feinstein	Filed: October 2, 2011  Dismissed: February 24, 2012	
	<p>1. Case dismissed for several reasons. First, Debtor failed to commence making any plan payments, which were \$313.57 a month. Second, Debtor failed to file and serve a motion to confirm the Chapter 13 Plan. Third, Debtor failed to provide the Chapter 13 Trustee with the documentation of his income. Fourth, Debtor failed to provide the Chapter 13 Trustee with copies of tax returns. Civil Minutes, Dckt. 45; <i>Id.</i></p> <p>2. Debtor's Plan provided for making a \$281.82 payment for a secured claim for which a vehicle (one of the above) was the collateral. No provision was made for the second secured claim. Additionally, the Plan was to fund \$2,500.00 payment to Debtor's counsel. Plan, Dckt. 27; <i>Id.</i></p> <p>3. Debtor asserted that the defaults occurred due to the fault of his attorney, with Debtor not being told that he needed to commence making payments. Letter requesting court vacate dismissal, Dckt. 51; <i>Id.</i> It was further asserted that Debtor's daughter would handle the case. <i>Id.</i> The Motion to Vacate was denied.</p>	
11-32377 Chapter 7 <i>In Pro Se</i>	Filed: May 18, 2011  Discharge: September 16, 2011	

Debtor has been "living" in Chapter 13 since October 2, 2011, continuing defaulting in modest to small monthly plan payments, having cases dismissed, and then filing a new case, in which he defaults.



While Debtor's counsel filed a pleading titled "Opposition," no declaration is provided in opposition. All that counsel argues is that the Debtor needed time to gather documents and only recently delivered them to counsel. No explanation is provided to Debtor's current counsel, who has been Debtor's counsel since filing the immediately prior Chapter 13 case, 12-33383, on July 12, 2012, though the dismissal of that case on September 17, 2015 - which was dismissed just three months before that counsel filed the present case on December 24, 2015.

In reviewing the Schedules and Statement of Financial Affairs, the court is unable to discern what good faith, bona fide bankruptcy reason exists for Debtor and Debtor's counsel to file this case. Some items which stand out to the court include:

- A. In response to Question 8 (Part 2) of the Petition, Debtor states under penalty of perjury that he has filed only one prior bankruptcy case, 12-33383, in the eight years prior to December 24, 2015. By the court's calculation, eight years prior would be December 25, 2007 - during which Debtor has filed, and had dismissed two other Chapter 13 cases and obtained a discharge in a third Chapter 7 case. Dckt. 1 at 3.
- B. On Schedule D, Debtor lists two claims secured by the one piece of real property he owns, stating that both are "contingent." *Id.* at 23. These same two creditors are listed on Schedule G as having executory contracts - with one stated to have a "Reverse Mortgage." *Id.* at 24.
- C. On Schedule E Debtor does not list any creditors having priority unsecured claims. Dckt. 15.
- D. On Schedule F, Debtor does not list any creditors having general unsecured claims. *Id.*
- E. On Schedule I, Debtor lists having \$2,079.83 in gross income (Social Security and retirement). Dckt. 1 at 27.
- F. On Schedule J, Debtor lists having (\$2,060.00) in monthly expenses. *Id.* at 29-30. These expenses include:

1.	Mortgage/Rent.....	(\$1,461.00)
2.	Home Maintenance.....	(\$1,100.00)
3.	Electricity/Heat.....	(\$ 280.00)
4.	Water/Sewer.....	(\$ 150.00)
5.	Phone/Cable.....	(\$ 130.00)
6.	Food/Housekeeping Supplies.....	(\$ 500.00)
7.	Clothing/Laundry.....	(\$ 75.00)
8.	Personal Care Products.....	(\$ 150.00)
9.	Medical, Dental Expenses.....	(\$ 300.00)
10.	Transportation.....	(\$ 150.00)
11.	Entertainment.....	(\$ 50.00)
12.	Charitable Contributions.....	(\$ 75.00)
13.	Vehicle Insurance.....	(\$ 155.00)
14.	Other Real Property Taxes.....	(\$1,100.00)
15.	Other Real Property Maintenance....	(\$ 45.00)

While Debtor's and Debtor's counsel's math would add up the above expenses stated under penalty of perjury to only (\$2,060.00) in expenses, they actually total more than (\$5,600.00) a month. It appears that the (\$2,060.00) is merely a construct of an amount necessary to report expenses which exhaust the Debtor's month income.

- G. On the Statement of Financial Affairs, Questions 4 and 5, Debtor states under penalty of perjury that during the 2015, 2014, and 2013 that he had no income of any kind (including no Social Security or retirement). *Id.* at 32.
- H. On the Statement of Financial Affairs, Question 9, Debtor states that he is not and has not in the year prior to the commencement of the bankruptcy case, been a party to any lawsuit or court action. *Id.* at 35.
- I. On his Statement of Current Monthly Income (Form 122C-1), Debtor states under penalty of perjury that he actually had income of \$2,079.83 a month during the six months prior to the commencement of this bankruptcy case. *Id.* at 43-44.

The Chapter 13 Plan filed in this case drops the plan payment even lower - only \$100.00 a month. Dckt. 14. The plan term is thirty-six months, which generates gross plan payments of \$3,600.00. The Plan makes no provision for paying any claims and is to the most part left blank.

On February 11, 2016, Nationstar Mortgage, LLC, dba Champion Mortgage Company, filed an opposition, stating that its secured claim is a reverse mortgage, the "payment" of which cannot be modified by Debtor through the bankruptcy case. Dckt. 31. To the extent that Debtor would seek to repay the reverse mortgage obligation, plan payments of \$100.00 a month are not sufficient to pay this creditors asserted claim of \$182,939.15. This creditor's objection to confirmation was sustained. Civil Minutes, Dckt. 43.

#### **Dismissal of Case is Proper**

As addressed above, Debtor (with the assistance of various attorneys) has filed multiple Chapter 13 cases, defaulted in those cases, and had them dismissed. In this case, he is not prosecuting the case. The "Opposition" states little and is not supported by evidence. Counsel for the Debtor offers no explanation as to what "new information" Debtor has after that counsel has been representing Debtor in the prior case and the present case for now more than three years.

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.

13. [16-20007-E-13](#) BRENDA GLOVER  
DPC-3 Pro Se

MOTION TO DISMISS CASE  
3-4-16 [[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.**

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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 March 4, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 4, 2016. Dckt. 31.

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

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).

Unfortunately, the Debtor has failed to file an opposition to the instant Motion to provide evidence that the delinquency and attendance of the Meeting of Creditors 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.

14. [15-27009-E-13](#) ALICE RANSOM  
DPC-1 Mikalah Liviakis

MOTION TO DISMISS CASE  
3-16-16 [[21](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 16, 2016. 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 March 16, 2016. Dckt. 21.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,495.00 delinquent in plan payments, which represents multiple months of the \$4,499.00 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 filed a response nor have they 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.

15. [11-49910](#)-E-13 LINDA REED  
DPC-1 Richard Chan

MOTION TO DISMISS CASE  
3-16-16 [[29](#)]

**Final Ruling:** No appearance at the April 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.**

16. [13-22012-E-13](#) KENNETH/KRISTINE THOMPSON MOTION TO DISMISS CASE  
DPC-3 Peter Macaluso 3-16-16 [[111](#)]

**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.**

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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 March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 111. The Trustee seeks dismissal on the ground that the Debtor has failed to provide for the priority claims of the Employment Development Department (Proof of Claims No. 11 and 12) in the total amount of \$3,467.17. The Trustee notes that he previously raised this point at the prior Motion to Dismiss. At the time, the Debtor requested the Motion be denied as the Debtor proposed adding the correct amount in a modification in the order confirming. The Trustee states that the modification cannot be located on PACER.

#### **DEBTOR'S OPPOSITION**

Kenneth and Kristine Thompson ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 115. The Debtor state that they have drafted a proposed application and order to allow a modification for Debtor's plan.

The Debtor states that while the application and proposed order were drafted earlier, it was not "thoroughly followed-up with and as such the application and order has not been submitted." Dckt. 115.

The Debtor requests that the instant Motion be denied and that the court approve the application for modification.

#### **TRUSTEE'S REPLY**

The Trustee filed a reply on April 8, 2016. Dckt. 118. The Trustee notes that the Debtor have proposed an application and order to allow a minor modification of the plan. Dckt. 116, Exhibit 1. However, the Trustee argues that the modification does not resolve the Trustee's motion. The amendment only addresses Proof of Claim No. 11 rather than both No. 11 and 12.

Additionally, the Trustee notes that the proposed modification is not in the form of a joint ex parte motion.

#### **DISCUSSION**

The Trustee argues that the Debtor is in material default of the plan under § 2.13 by failing to provide for the priority portion of the Employment Development Department in the amount of \$3,467.17. This is grounds for dismissal pursuant to 11 U.S.C. § 1307(a)(6).

The Debtor requests that the court permit a modification of the plan and to deny the Motion. However, the Debtor does not state how the plan payments currently would be able to account for the priority claim or if there is any other impact on other terms of the plan by the addition. Instead of filing an modified plan correcting this, the Debtor is seeking to "piece-meal" the plan back together. This is improper, especially in the context of a Motion to Dismiss.

The Debtor was given the opportunity to properly file and serve a proposed modification in light of the representations made by the Debtor at the original Motion to Dismiss on September 9, 2015. Dckt. 107.

Even more significantly, Debtor does not present the court with any basis for there being an "on the fly," Debtor stated amendment to a confirmed plan. Debtor has made no effort to modify the prior plan, even with a joint ex-parte motion to modify with the Trustee's consent.

Therefore, because the Debtor is in material default of the plan because failed to provide for the priority claim of Employment Development Department, 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.

17.    [16-20113](#)-E-13    VICTOR NAVARRO AND                      ORDER TO SHOW CAUSE - FAILURE  
                                 KRISTINA ZAPATA-NAVARRO                      TO PAY FEES  
                                 Michael Benavides                      2-16-16 [[21](#)]

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

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The Order to Show Cause was served by the Clerk of the Court on Victor Navarro and Kristina Zapata-Navarro ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 16, 2016. The court computes that 64 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 February 10, 2016).

**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.

18. [15-26614](#)-E-13 NICOLE DOW  
DPC-2 Julius Engel

CONTINUED 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 - Hearing Required.

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

<b>The court's decision is to grant the Motion to Dismiss Case and dismiss the case.</b>
--

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

#### **DEBTOR'S OPPOSITION**

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.

#### **TRUSTEE'S REPLY**

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

**JANUARY 20, 2016 HEARING**

In light of the Debtor's request for a continuance and the Trustee's consent, the Motion was continued to 10:00 a.m. on April 20, 2016. Dckt. 56.

**DISCUSSION**

Since the continuance, the Debtor has failed to file a proposed amended plan nor Motion to Confirm.

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. 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.

19. [15-29616](#)-E-13 KRISTIN CRISTE MOTION TO DISMISS CASE  
DPC-1 Mary Ellen Terranella 3-23-16 [[17](#)]

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

20. [12-35317](#)-E-13 JOHN VIRGEN AND ELIZABETH MOTION TO DISMISS CASE  
DPC-2 LOWERY-VIRGEN 3-16-16 [[71](#)]  
Matthew DeCaminada

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

21. [12-38619](#)-E-13 WILLIAM HARTICON  
DPC-6 James Keenan

MOTION TO DISMISS CASE  
3-18-16 [[133](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 18, 2016. 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.

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 43. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$900.00 delinquent in plan payments, which represents multiple months of the \$450.00 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.

22.	<a href="#"><u>15-23328</u></a> -E-13	KAREN LUXTON-LOSER Chinonye Ugorji	MOTION TO DISMISS CASE 3-16-16 [ <a href="#"><u>26</u></a> ]
	DPC-1		

**Final Ruling:** No appearance at the April 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.

23. [16-20335](#)-E-13 ROBERT/BELINDA BOUGHTON  
Thomas Amberg

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-26-16 [[22](#)]

**Final Ruling: No appearance at the April 20, 2016 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Robert and Belinda Boughton ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 26, 2016. The court computes that 54 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 February 22, 2016).

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

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.



24. [10-46636](#)-E-13 JOSEPH/KIMBERLY OLIVA  
DPC-10 Peter Macaluso

MOTION TO DISMISS CASE  
3-18-16 [[142](#)]

**Final Ruling:** No appearance at the April 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.

25. [14-28140-E-13](#) MAX SHOFFNER  
DPC-1 Stephen Reynolds

MOTION TO DISMISS CASE  
3-16-16 [[20](#)]

**Final Ruling:** No appearance at the April 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 March 16, 2016. 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.

<b>The Motion to Dismiss is continued to 10:00 a.m. on May 18, 2016.</b>
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 20. The Trustee asserts that dismissal is proper because the Debtor's plan will take 65 months to complete, rather than the maximum 60 months allowed.

#### **DEBTOR'S OPPOSITION**

Max Anthony Shoffner, Jr. ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 24. The Debtor asserts that the Debtor has paid a total of \$15,270.00 to the Trustee through March 2016. Debtor voluntarily increased his payments from \$740.00 to \$840.00 in April 2015 when priority claims filed were greater than expected. The Debtor states that he and the Trustee have negotiated a stipulated plan modification to increase plan payments for the remainder of the plan to \$850.00 per month.

The proposed modification will not modify the treatment of any creditor class. The Debtor states that the Trustee has requested that the Debtor file an amended Schedule I and J in support of the modification.

The Debtor request a 30 day continuance.

#### **DISCUSSION**

In light of the Debtor's representations that the Trustee and Debtor are currently working on a joint stipulation to modify the plan for the remaining months to increase plan payments and to offer the parties additional time to finalize such stipulation, the Motion is continued to 10:00 a.m. on May 18, 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 May 18, 2016.

26. [15-29640](#)-E-13 DANIEL MAYER  
Candace Brooks

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-19-16 [[29](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
-----

The case having previously been dismissed, the Order to Show Cause 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 Order to Show Cause 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 Order to Show Cause is dismissed as moot, the case having been dismissed.

27. [13-23841](#)-E-13 PATRICK PADILLA MOTION TO DISMISS CASE  
DPC-2 Richard Chan 3-16-16 [[61](#)]

**Final Ruling:** No appearance at the April 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.**

28. [15-28741](#)-E-13 PAMELA MCGAUGHY ORDER TO SHOW CAUSE - FAILURE  
Thomas Amberg TO PAY FEES  
3-14-16 [[32](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Pamela McGaughy ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 14, 2016. The court computes that 37 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 (\$73.00 due on March 9, 2016).

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

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.

29. [12-38242](#)-E-13 JOSE/APRIL OSEGUERA MOTION TO DISMISS CASE  
DPC-2 Kristy Hernandez 3-16-16 [[33](#)]

**Final Ruling:** No appearance at the April 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.**

30. [16-20743](#)-E-13 ANNA PETERSON MOTION TO DISMISS CASE  
DPC-2 Ronald Holland 4-5-16 [[40](#)]

**Final Ruling:** No appearance at the April 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.**

31. [14-30944-E-13](#) RAVINDER GILL  
DPC-1 Mikalah Liviakis

MOTION TO DISMISS CASE  
3-18-16 [[38](#)]

**Final Ruling:** No appearance at the April 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 March 18, 2016. 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.

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 38. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,996.00 delinquent in plan payments, which represents multiple months of the \$1,999.00 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.

32.	<a href="#"><u>11-20146</u></a> -E-13 <b>TIMOTHY GAINES</b> DPC-7 <b>Michael Hays</b>	<b>CONTINUED MOTION TO DISMISS CASE 1-20-16 [<a href="#"><u>77</u>]</a></b>
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**Final Ruling: No appearance at the April 20, 2016 hearing is required.**

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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 January 20, 2016. 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).

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 20, 2016. Dckt. 77. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

**DEBTOR'S OPPOSITION**

The Debtor filed an opposition on February 4, 2016. Dckt. 93. The Debtor states that due to his employment as a self employed roofer, he fell behind in payments. The Debtor, without consulting his attorney, borrowed funds to pay off his mortgage in full, which was only \$6,460.79.

The Debtor asserts that the Trustee no longer had to send Ditech the monthly \$1,183.82 share of what would have been his \$1,402.00 plan payment. The Debtor has allegedly also paid the Trustee \$1,500.00 to address the difference for the last three months to pay the other creditors.

#### **DEBTOR'S SUPPLEMENTAL DOCUMENT**

On February 8, 2016, the Debtor filed a supplemental document. Dckt. 96. The declaration states:

Attached are copies of the Debtor's recent loan for \$27,000.00, the Final Settlement Statement from Mid Valley Title and Escrow dated 1/5/16 showing \$6,460.79 sent to Ditech to pay off his outstanding mortgage balance and \$19,856.21 sent to Debtor, and Debtor's 2.1.16 email referencing the repairs to his home "new roof, heat&ac, carpet, drywall repairs and exterior' for which the funds are apparently allocated.

*Id.*

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response on February 8, 2016. Dckt. 98. The Trustee states that the Debtor is delinquent in the amount of \$2,706.00. Furthermore, the Trustee indicates that the Debtor did not indicate the amount of the loan, where the monies were borrowed from, or to offer evidence of the pay off.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,706.00 delinquent in plan payments, which represents multiple months of the \$1,402.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

As noted by the Trustee and the Debtor, the Debtor took out a loan to pay off his remaining mortgage without getting the authorization of the court. To date, no Motion to Incur Debt has been filed requesting retroactive authority.

Under the terms of the existing confirmed Modified Plan, Debtor is obligated to make the following plan payments:

- i. 2/25/11 through 2/25/12.....\$1,460.00
- ii. 3/25/12 through 4/25/13.....\$1,471.77
- iii. 5/25/13 through 60<sup>th</sup> Month.....\$1,402.00.

These payments total \$85,850.78.

The Trustee filed his Motion to Dismiss on January 20, 2016, asserting a delinquency of \$2,804.00. In addition, the 60<sup>th</sup> month payment for January 2016 in the amount of \$1,402.00 remained to be paid. The total amount remaining to be paid is \$4,206.00.



Debtor argues that notwithstanding the terms of the Plan, he can forgo making the \$4,206.00 required payments, and instead make only a single \$1,500.00 payment (the difference between the required \$1,402.00 plan payment and the required Class 1 payment for the secured claim which Debtor close to payoff outside of the plan by the loan obtained without authorization).

Debtor does not have the option to unilaterally modify his Plan, choose to obtain loans without court authorization, divert monies from the Trustee, and then "fix it" by making a discounted plan payment when caught by the Trustee. Debtor is, and has been represented by counsel in this case. Debtor's counsel elected to be paid a \$3,500.00 flat fee in this case. Confirmation Order, Dckt. 25. Though counsel provided additional services in having to confirm a modified plan and to deal with numerous notices of default in plan payments issued by the Trustee, he has not sought any additional fees.

Debtor has not sought to further modify the plan to provide for lower payments. Debtor has not sought a hardship discharge. What Debtor has done is, without regard to the Bankruptcy Code done it "his way." He has chosen to borrow money without court authorization. He has chosen to unilaterally reduce his plan payments.

When confronted by the Trustee, Debtor's response was that because he didn't have jobs in the winter months (as a self-employed roofer), he couldn't make the plan payments. Though he was in bankruptcy and unable to make the plan payments, Debtor states that he could borrow money to accelerate the payments to the creditor having the claim secured by Debtor's home. Declaration, Dckt. 94. In the Declaration Debtor does not state how someone with no income, unable to make plan payments, was able to obtain a loan.

A supplemental declaration purporting to disclose the loan obtained by Debtor was filed on February 8, 2016. Dckt. 96. This declaration is not provided by Debtor, but Debtor's attorney in this case. No testimony is provided as to how the attorney has any personal knowledge of the loan or can properly authenticate the exhibits which are attached to the Declaration. Fed. R. Evid. 601, 602.

Unfortunately, Debtor seeks to have this court cut too many corners and allow Debtor to write his personal bankruptcy code to serve his needs. The court cannot, and will not, ignore the law and merely rubber stamp whatever the Debtor wants.

There is a confirmed plan in this case for which the default in payments through January 2016 was \$4,206.00. The Debtor having made a \$1,500.00 payment, an arrearage of \$2,706.00 still exists. The court cannot ignore that arrearage. The court cannot ignore the confirmed Modified Plan.

#### **FEBRUARY 17, 2016 HEARING**

At the hearing, Counsel for Debtor reported that he is preparing and will be filing shortly a motion for a hardship discharge. If granted, such motion addresses the issues raised by the Chapter 13 Trustee in this Motion.

The court continued the Motion to 10:00 a.m. on April 20, 2016.

#### **DISCUSSION**

On March 1, 2016, the court granted the Debtor's Motion for Hardship Discharge. Dckt. 117. The Debtor's discharge was entered on March 2, 2016. Dckt. 119.

In light of the court having granted the Debtor a hardship discharge, discharge being entered, and no plan remaining to be completed, 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 Debtor having previously been granted a hardship discharge, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot.

33. [11-20146-E-13](#) TIMOTHY GAINES  
MOH-2 Michael Hays

CONTINUED MOTION TO AVOID LIEN  
OF DISCOVER BANK  
1-22-16 [[81](#)]

**Tentative Ruling:** The Motion to Avoid Judicial Lien 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).

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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, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of Discover Bank ("Creditor") against property of Timothy L. Gaines ("Debtor") commonly known as 3443 Charlene Avenue, Oroville, California (the "Property").

#### **FEBRUARY 9, 2016 HEARING**

At the hearing, the court continued the hearing to 10:00 a.m. on February 17, 2016 due to the additional information as to the Debtor borrowing unauthorized funds to pay off the Debtor's remaining mortgage balance.

#### **DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,309.44. An abstract of judgment was recorded with Butte County on February 5, 2008, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$90,000 as of the date of the petition. The unavoidable consensual liens total \$58,715.06 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$31,284.94 on Schedule C.

On February 8, 2016, the Debtor filed a supplemental documentation as to an unauthorized loan taken by the Debtor to pay the outstanding balance of the mortgage of \$6,460.79 to Ditech. Dckt. 96.

Courts have found that "exemptions and impairment are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property." *In re Chiu*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) aff'd, 304 F.3d 905 (9th Cir. 2002)(citation omitted).

#### **FEBRUARY 17, 2016 HEARING**

At the hearing, Counsel for Debtor reported that he is preparing and will be filing shortly a motion for a hardship discharge. If granted, such motion addresses the issues raised above.

At the hearing, the court continued the Motion to 10:00 a.m. on April 20, 2016. Dckt. 115.

#### **APRIL 20, 2016 HEARING**

On March 1, 2016, the court entered an order granting the Debtor a hardship discharge. Dckt. 118.

The Debtor's discharge was entered on March 2, 2016. Dckt. 119.

Here, at the date of filing, the unavoidable consensual liens totaled \$58,715.06. While the subsequent payment of the balance throughout the plan may have created equity in the Property, the determination of whether a judicial lien impairs an exemption is done at the time of the filing.

Therefore, after application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing could be avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Discover Card, California Superior Court for Butte County Case No. 140758, recorded on February 5, 2008, Document No. 2008-0004205 with the Butte County Recorder, against the real property commonly known as 3443 Charlene Avenue, Oroville, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

34. 11-20146-E-13 TIMOTHY GAINES  
MOH-3 Michael Hays

CONTINUED MOTION TO AVOID LIEN  
OF DODEKA, LLC AND/OR MOTION TO  
AVOID LIEN OF SUNLAN LDP, LLC  
1-22-16 [[85](#)]

**Tentative Ruling:** The Motion to Avoid Judicial Lien 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, Chapter 13 Trustee, and Office of the United States Trustee on January 26, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien 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.

**The Motion to Avoid Judicial Lien is dismissed without prejudice.**

This Motion requests an order avoiding the judicial lien of Dodeka, LLC and or Sunlan LDP, LLC ("Creditor") against property of Timothy L. Gaines ("Debtor") commonly known as 3443 Charlene Avenue, Oroville, California (the "Property").

**FEBRUARY 9, 2016 HEARING**

At the hearing, the court continued the hearing to 10:00 a.m. on February 17, 2016 due to the additional information as to the Debtor borrowing unauthorized funds to pay off the Debtor's remaining mortgage balance.

**DISCUSSION**

A judgment was entered against Debtor in favor of Creditor in the amount of \$8,591.60. An abstract of judgment was recorded with Butte County on May 12, 2010, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$90,000 as of the date of the petition. The unavoidable consensual liens total \$58,715.06 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$31,284.94 on Schedule C.

On February 8, 2016, the Debtor filed a supplemental documentation as to an unauthorized loan taken by the Debtor to pay the outstanding balance of the mortgage of \$6,460.79 to Ditech. Dckt. 96.

Courts have found that "exemptions and impairment are determined on the date of bankruptcy and without reference to subsequent changes in the character or value of the exempt property." *In re Chiu*, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) aff'd, 304 F.3d 905 (9th Cir. 2002)(citation omitted).

Here, at the date of filing, the unavoidable consensual liens totaled \$58,715.06.

**Failure to Provide For Claim of Creditor**

In the sixtieth month of the Modified Plan, when all payments required thereunder are to be complete, Debtor filed this Motion. In reviewing the Modified Plan, Debtor has failed to provide for the treatment of Creditor's secured claim.

The confirmed Modified Plan filed in this case, Dckt. 36, provide the following basic terms:

- a. Plan Payments Made By Debtor -

- i. 2/25/11 through 2/25/12.....\$1,460.00
  - ii. 3/25/12 through 4/25/13.....\$1,471.77
  - iii. 5/25/13 through 60<sup>th</sup> Month.....\$1,402.00.
- b. Class 1 Secured Claims To Be Paid Through Plan -
  - i. Everhome Mort
    - (1) Monthly Contract Installment.....(\$942.77)
    - (2) Arrearage Payment.....(\$241.05)
- c. Class 2 Secured Claims Modified by Plan
  - i. Not Reduced Based on Value of Collateral.....None
  - ii. Reduced Based on Value of Collateral.....None
  - iii. Reduced to \$0.00 Based on Value of Collateral..None
- d. Class 3 Secured Claims Satisfied By Surrender
  - i. None
- e. Class 4 Secured Claims Paid Directly By Debtor
  - i. None
- f. Class 5 Unsecured Priority Claims
  - i. Internal Revenue Service
  - ii. California Franchise Tax Board
  - iii. Carolyn Chan
- g. Class 6 Designated Unsecured Claims
  - i. None
- h. Class 6 General Unsecured Claims
  - i. 7% Dividend
  - ii. Secured Claim filed by Sunlan, LDP, LLC to be amended to be unsecured or determined by court to be unsecured due to creditor having only a judgment lien and "not a true security interest."

The Sunlan LDP, LLC claim was never amended to be stated as a general unsecured claim. Proof of Claim No. 13, Clerk's Register of Claims in the Bankruptcy Case. No motion to value the secured claim of Sunlan LDP, LLC has been filed in this bankruptcy case by Debtor.

On January 22, 2016, Debtor filed this Motion to Avoid the Judicial Lien of "Dodeka, LLC and or Sunlan LDP, LLC." Dckt. 85. The Motion seeks to avoid the lien pursuant to 11 U.S.C. § 522(f), contending that the value of the property securing the claim is less than the senior liens and the Debtor's homestead exemption.

The Motion asserts that the claim of "Dodeka, LLC and or Sunlan LDP, LLC was "listed for discharge on Debtor(s) Schedule F." *Id.* No proof of claim has been filed by a Dodeka, LLC, and neither the Motion to Avoid Lien or the supporting Declaration (Dckt. 87) provide any indication of from where this other person appears. In reviewing Proof of Claim No. 3, the court notes that there is an attachment which is titled "Acknowledgment of Assignment of Judgment," which states that the judgment was originally obtained by Dodeka, LLC and was assigned to Sunlan LDP, LLC.

This Motion to Avoid was filed in January 2016, the 60th Month of the Plan. This is after all Plan payments were required to be completed. This is after the Trustee was required to have all but the final month of plan payments disbursed. Until January 2016, the secured claim of Sunlan LDP, LLC was not provided for by the Plan, Debtor apparently electing to leave Sunlan LDP, LLC to its collateral if, someday, it had any value for the judgment lien. Sunlan LDP, LLC having elected to file a fully secured claim it was not entitled to receive any unsecured dividend in this case. Sunlan LDP, LLC having filed a fully secured claim and the plan not providing for reducing the claim based on the value of the collateral, Sunland LDP, LLC did not have an interest in objecting to the Plan based on the proposed treatment of general unsecured claims. Debtor not having filed a motion to value the secured claim of Sunland LDP, LLC pursuant to 11 U.S.C. § 506(a), Sunland LDP, LLC did not have an opportunity to litigate the value of the property that secures its claim or have any notice that Debtor asserted the fully secured claim of Sunland LDP, LLC was a general unsecured claim.

The court cannot now, after the Debtor elected to not provide for the secured claim of Sunland LDP, LLC in the Modified Plan, after Debtor elected not to value the secured claim of Sunland LDP, LLC, after Debtor provide no notice to Sunland LDP, LLC that its secured claim would actually be treated as a general unsecured claim, and after Debtor's bankruptcy case has now exceeded the sixty months of the Modified Plan, the court retroactively change the secured claim of Sunland LDP, LLC to an unsecured claim not provided for in Debtor's Modified Chapter 13 Plan.

As discussed COLLIER ON BANKRUPTCY, SIXTEENTH ED., ¶ 1327.02, confirmation of the Chapter 13 Plan becomes the binding contract between the parties.

" Upon becoming final, the order confirming a chapter 13 plan represents a binding determination of the rights and liabilities of the parties as ordained by the plan. Absent timely appeal, the confirmed plan is *res judicata* and its terms are not subject to collateral attack. 3 The *res judicata* effect of confirmation may be eliminated only if confirmation is revoked, or if the case is later dismissed or converted to another chapter.

...



The purpose of section 1327(a) is the same as the purpose served by the general doctrine of res judicata. There must be finality to a confirmation order so that all parties may rely upon it without concern that actions that they may later take could be upset because of a later change or revocation of the order. 6 As the bankruptcy appellate panel for the Ninth Circuit held:

'It would hardly serve the purposes for which the federal bankruptcy laws were intended to permit a dissatisfied creditor to withhold its opinion of the practicality and fairness of a debtor's plan until after that plan has been completed. At such a late point in time, a meaningful modification of the plan is difficult, if not impossible, and the objecting creditor is in a position to circumvent the protective shield provided debtors under chapter 13.' [Citing *In re Gregory*, 19 B.R. 668, 670 (B.A.P. 9th Cir. 1982) , *aff'd*, 705 F.2d 1118 (9th Cir. 1983).]"

COLLIER ON BANKRUPTCY, SIXTEENTH ED., ¶ 1327.02[1].

The discussion in Collier continues, stating:

"[a] Burden on Creditors to Review and Object to Plan

The binding effect of the confirmation order establishes the rights of the debtor and creditors as those that are provided in the plan. It is therefore incumbent upon creditors with notice of the chapter 13 case to review the plan and object to the plan if they believe it to be improper; they may ignore the confirmation hearing only at their peril.<sup>9</sup> [ *In re Gregory*, 705 F.2d 1118, 1123 (9th Cir. 1983)] Of course, if the plan is ambiguous, the court may still have to resolve disputes as to the rights of the parties, and in such cases the plan may be construed against the debtor, the party who drafted it.<sup>10</sup> [*Brawders v. County of Ventura (In re Brawders)*, 503 F.3d 856 (9th Cir. 2007)] Such disputes are limited to the terms of the plan itself, and do not extend to terms or agreements that are unwritten or not of record.

[b] Creditors Restricted to Rights Afforded by Plan

Because creditors are limited to those rights that they are afforded by the plan, they may not take actions to collect debts that are inconsistent with the method of payment provided for in the plan. They may not exercise pre-petition rights they may have had to collect a debt by setoff, foreclosure or otherwise...Once the plan is confirmed the only cause for relief from the stay that may be validly asserted is the debtor's material failure to comply with the plan. A creditor that had the opportunity to object that the plan did not meet the standards for confirmation, which provide the protections Congress deemed appropriate for the various types of creditors, may not later assert any interest, such as a

right to setoff, other than that provided for it by the confirmed plan...."

*Id.*

The Confirmed Modified Plan expressly addresses secured claims which are not provided for in the plan as follows:

"2.12. Secured claims not listed as Class 1,2.3. or 4 claims are not provided for by this plan. The failure to provide for a secured claim in one of these classes may be cause to terminate the automatic stay."

Modified Plan, ¶ 2.12; Dckt. 36.

In the Modified Plan, Additional Provisions, buried in a reference to paragraph 2.15 dealing with general unsecured claims, Debtor states,

"Re: 2.15-Claim1: filed as unsecured totaled \$16,198.14. The \$10,508.12 claim filed by SUNLAN, LDP, LLC as "Secured" is expected to be voluntarily amended to unsecured by the creditor or determined by the Court to be treated as unsecured due to only having a judgment lien and not as true security interest. The total of these two amounts is the \$26,706.26 listed at 2.15 as the total of the unsecured claims."

Modified Plan, Additional Provisions, *Id.*

Debtor has not shown, or even argued, that the secured claim of Sunlan LDP, LLC has been provided for by the Plan. Further, that burying in a provision addressing unsecured claim a reference to the Debtor affirmatively acting to have the court reclassify the secured claim filed an unsecured claim under the plan constitutes a binding plan provision which so reclassified the claim. Debtor has taken no action to so reclassify the claim and has insured that Sunlan LDP, LLC would not be paid a dividend on its unsecured claim by waiting until the 60<sup>th</sup> month of the plan to spring the Motion to Avoid Lien on this Creditor. Further, Debtor insured that Sunlan LDP, LLC would not come forward to oppose the plan or treatment of its claim by leaving Sunlan LDP, LLC with a secured claim until spring the Motion to Avoid Lien until the 60<sup>th</sup> month of the Plan.

While Creditor has not filed an opposition, the court is concerned that by ignoring the law concerning confirmation of the plan, the secured claim provisions of the Plan, and the lack of action by Debtor to have the secured claim filed by Creditor reclassified as a general unsecured claim, the granting of the Motion would be in clear violation of the Bankruptcy Code. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); *see also Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Additionally, granting the Motion could also appear as a green light by the court for debtors and their attorneys to write potentially deceptive plan terms, failure to promptly act and prosecute cases in good faith, and then draw the court into a web of deceit and deception.

Judicial estoppel provides for a further basis to deny the instant Motion. Equitable doctrines, such as equitable and judicial estoppel focus upon conduct. *Alary Corp. v. Sims (In re Associated Vintage Group, Inc.)*, 283 B.R. 549, 565 (B.A.P. 9th Cir. 2002).

Equitable estoppel requires the following elements:

- (1) The party to be estopped must know the facts;
- (2) He must intend that his conduct shall be acted on or must so act that the party asserting the estoppel has a right to believe it is so intended;
- (3) The latter must be ignorant of the true facts; and
- (4) He must rely on the former's conduct to his injury.

*United States v. Ruby Co.*, 588 F.2d 697, 703 (9th Cir. 1978). Since estoppel is an equitable doctrine, it should be applied "where justice and fair play require it." *Id.*

Judicial estoppel is an equitable doctrine that encompasses a variety of different situations that revolve around the concern for preserving the integrity of the judicial process. *In re Associated Vintage Group, Inc.*, 283 B.R. at 565. The doctrine extends to incompatible statements and positions in different cases. *Rissetto v. Plumbers & Steamfitters Local 343*, 94 F.3d 597 (9th Cir. 1996).

Independent of unfair advantage from inconsistent positions, judicial estoppel may be imposed: out of "general consideration of the orderly administration of justice and regard for the dignity of judicial proceedings;" or to "protect against a litigant playing fast and loose with the courts." *Hamilton*, 270 F.3d 778 at 782; *Russell*, 893 F.2d at 1037. Moreover, it may be invoked "to protect the integrity of the bankruptcy process." *Hamilton*, 270 F.3d 778 at 785.

*In re Associated Vintage Group, Inc.*, 283 B.R. at 556. The Ninth Circuit requires that the inconsistent position have been "accepted" by the first court. *Id.*

Debtor's plan fails to provide for the Claim of Creditor. Debtor's plan leaves Creditor with only its secured claim and lien rights. Debtor accepted Creditor as having a fully secured claim and did not make any effort to have the court bifurcate the claim between secured and unsecured pursuant to 11 U.S.C. § 506(a). Debtor's Plan and inaction has worked to insure that Creditor be precluded from receiving an unsecured dividend. Judicial estoppel neatly fits into the instant fact pattern, by disallowing the Debtor to take a conflicting position at the expense of the Creditor.

Debtor having failed to provide for the secured claim, Debtor having elected to not have the secured claim valued, and Debtor electing to leave the Creditor its collateral, there are grounds to deny the Motion to Avoid Lien.

Finally, Debtor being in substantial default under the Plan and not seeking to either further modify the plan or seek a hardship discharge, the court is dismissing the bankruptcy case. This is a separate and independent basis for denying the Motion.

#### **FEBRUARY 17, 2016 HEARING**

At the hearing, Counsel for Debtor reported that he is preparing and will be filing shortly a motion for a hardship discharge. The court continued the hearing to afford counsel the opportunity to address the issues raised above.

#### **DEBTOR'S WITHDRAWAL**

On April 6, 2016, the Debtor filed a Notice of Withdrawal of the instant Motion.

The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Avoid, 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, and good cause appearing, **the court dismisses without prejudice the Motion to Avoid Lien.**

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having 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 Avoid is dismissed without prejudice.

35. [15-22449](#)-E-13 LUCIANO/MAGELIN VENTURA MOTION TO DISMISS CASE  
DPC-1 Mark Wolff 3-16-16 [[27](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 16, 2016. 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.

<b>The Motion to Dismiss is continued to 10:00 a.m. on June 22, 2016.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 27. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

#### **DEBTOR'S OPPOSITION**

Luciano and Magelin Ventura ("Debtor") filed an opposition to the instant Motion on April 6, 2016. Dckt. 31. The Debtor states that they have been unable to meet with their attorney to prepare a response or new plan due to a death in the Debtor's family. The Debtor has scheduled a meeting with counsel and requests additional time.

#### **TRUSTEE'S REPLY**

The Trustee filed a reply on April 12, 2016. Dckt. 33. The Trustee does not oppose continuing the matter to 10:00 a.m. on June 22, 2016 to allow Debtor additional time to meet with counsel in light of the recent death in the Debtor's family.

#### **DISCUSSION**

In light of the death in the Debtor's family and the request of the parties to continue the hearing to allow the Debtor the opportunity to confer with counsel, the instant Motion is continued to 10:00 a.m. on June 22, 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 June 22, 2016.

MOTION TO DISMISS CASE  
3-16-16 [[13](#)]

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 March 16, 2016. 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 grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 16. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

## DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,312.00 delinquent in plan payments, which represents multiple months of the \$2,156.00 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.

37. [16-20951](#)-E-13 FELICIA MARTINEZ MOTION TO DISMISS CASE  
DPC-2 Thomas Gillis 4-6-16 [[17](#)]

**Final Ruling:** No appearance at the April 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.**

38. [12-38452](#)-E-13 RICHARD/CHRISTINA MOTION TO DISMISS CASE  
DPC-1 MERCADEL 3-16-16 [[49](#)]  
Peter Macaluso

**Final Ruling:** No appearance at the April 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 March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 48.

Trustee asserts that 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 79 months.

#### **DEBTOR'S OPPOSITION**

On April 7, 2016, Debtor filed an opposition to the instant motion. Dckt. 52. Debtor states that a modified plan will be proposed and a motion to confirm modified plan will be filed before this hearing in order to fix the issues Trustee has identified.

#### **DISCUSSION**

The Trustee's argument is well-taken. While Debtor states that a modified plan will be created to fix the overextended term of the plan, a review of the docket shows that no motion to confirm modified plan has been

filed. The current 79 months until completion exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

No proposed modified plan or motion to confirm was filed as of the court's April 17, 2016 review of the files in this case.

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

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

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

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

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

40. [15-26252-E-13](#) RALPH/CHRISTINA CONCHAS MOTION TO DISMISS CASE  
DPC-2 Julius Engel 3-18-16 [[48](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 18, 2016. 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 March 18, 2016. Dckt. 48.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,510.00 delinquent in plan payments, which represents multiple months of the \$2,805.00 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 respond with 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.

41. [15-23853](#)-E-13 PETER/TAMARALEE HARBMAN MOTION TO DISMISS CASE  
DPC-2 Cara O'Neill 3-18-16 [[42](#)]

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

42. [14-21955](#)-E-13 STEVEN/DEBRA RAZWICK MOTION TO DISMISS CASE  
DPC-4 Andrew Bakos 3-16-16 [[110](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 16, 2016. 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.

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 110. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,253.96 delinquent in plan payments, which represents multiple months of the \$3,115.00 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.

43. [14-20056-E-13](#) THOMAS/SUSAN CLAYTON  
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE  
3-18-16 [[110](#)]

**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 March 18, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Though the Trustee identified an error in the address for Debtor, a Response has been filed, demonstrating that sufficient service had been provided.

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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 110.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,800.00 delinquent in plan payments, which represents multiple months of the \$1,300.00 plan payment.

#### **DEBTOR'S RESPONSE**

On April 6, 2016, Debtor filed an opposition to the instant motion. Dckt. 114. Debtor states that they will become current before this hearing date.

#### **TRUSTEE'S SUPPLEMENTAL FILING**

Trustee filed a Motion to Continue on April 8, 2016, on the grounds that Trustee served the wrong address, and therefore Debtor did not receive notice. Dckt. 116.

The Trustee's arguments are well-taken. While Debtor states that they will become current before the date of this hearing, Debtor has provided no evidence to support this assertion. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While the Trustee may have provided incorrect notice, Debtor seems to have been provided ample notice anyway, as they were able to file a timely reply to Trustee's motion. Debtor did not assert any prejudice from lack of proper notice in their opposition, and there does not appear to be any.

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.

44. [15-28456](#)-E-13 GREGORY BRUTUS  
DPC-2 Mark Wolff

CONTINUED MOTION TO DISMISS  
CASE  
12-18-15 [[32](#)]

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



45. [13-20059](#)-E-13 IRMA QUIAMBAO  
DPC-7 Kristy Hernandez

MOTION TO DISMISS CASE  
3-16-16 [[55](#)]

**Final Ruling:** No appearance at the April 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 March 16, 2016. 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 March 16, 2016. Dckt. 55.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,720.00 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).

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.

46. [14-28961](#)-E-13    RODEL MAULINO AND MIMSY    MOTION TO DISMISS CASE  
DPC-2    ABARA-MAULINO    3-16-16 [[65](#)]  
Mitchell Abdallah

**Final Ruling:** No appearance at the April 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 - No 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 February 1, 2016. By the court's calculation, 79 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).

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 1, 2016. Dckt. 19.

The Trustee argues that the Debtor did not commence making plan payments and is \$9,000.00 delinquent in plan payments, which represents multiple months of the \$4,500.00 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).

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).

#### REVIEW OF CURRENT AND PRIOR CASES

Debtor has filed three prior cases: (1) 13-27224, Chapter 7 filed May 28, 2013, dismissed August 30, 2013; (2) 13-22977, Chapter 7 filed March 5, 2013, Dismissed March 25, 2013; and 11-48386, Chapter 13 filed December 7, 2011, Dismissed December 27, 2011.

The Chapter 13 Plan filed by Debtor requires \$4,500.00 a month payments for sixty months. Plan, Dckt. 15. For the Class 1 Claim treatment, Shell Point Mortgage is listed as having a secured claim with \$4,500.00 a month regular monthly mortgage payments and a \$225,000.00 arrearage, for which there will be an additional \$4,500.00 a month dividend. Plan, ¶ 2.08; *Id.* The only other creditor provided for is the Internal Revenue Service for a \$5,707.00 priority unsecured claim. Plan, ¶ 2.15; *Id.*

The Bank of New York Mellon, Trustee (Shell Point Mortgage as loan servicer) has filed Proof of Claim No. 2 for \$580,670.37. This is a secured claim, for which the pre-petition arrearage is stated to be \$298,621.81.

On Schedule I Debtor lists having gross income of \$6,000.00, as the office manager of her spouse's business. Her spouse lists \$8,000.00 in net income from that business. Dckt. 13 at 17. On Schedule J, no income or self employment taxes are listed for Debtor's spouse. *Id.* at 20. Taken at face value, after payment of the expenses which Debtor states under penalty of perjury on Schedule J are reasonable and necessary, Debtor has \$8,369.00 of monthly net income to fund a plan. That is not provided for in this case.

There does not appear, based on the information provided by Debtor under penalty of perjury, any reasons for denying the present 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.

48.    [16-20963](#)-E-13    RALPH CALLENDER    MOTION TO DISMISS CASE  
DPC-2                   Mikalah Liviakis                   4-6-16 [[20](#)]

**Final Ruling:** No appearance at the April 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.**

49.    [13-29064](#)-E-13    TERRY/REBECA BRISTER    MOTION TO DISMISS CASE  
DPC-2                   Mary Ellen Terranella                   3-18-16 [[65](#)]

**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 March 18, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to

Dismiss on March 18, 2016. Dckt. 65.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,270.00 delinquent in plan payments, which represents multiple months of the \$1,760.00 plan payment.

#### **DEBTOR'S OPPOSITION**

On April 6, 2016, Debtor filed an opposition to the instant motion. Dckt. 69. Debtor states that they will have a modified plan and motion to modify plan on file prior to this hearing. Debtor further states that Mr. Brister was forced to retire to care for his wife, who is now disabled. Debtors intend to modify their plan to surrender the 2008 BMW Z4 which Mrs. Brister can no longer drive in order to make plan payments affordable.

#### **DISCUSSION**

The Trustee's arguments are well-taken. While Debtor states that they will have a modified plan filed to account for changes circumstances, a review of the docket shows that no motion to confirm modified plan has been filed. 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.

50. [11-29166](#)-E-13    MICHAEL/JENNIFER PETERS    MOTION TO DISMISS CASE  
DPC-4                    Mark Wolff                    4-1-16 [[121](#)]

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

51. [14-29067](#)-E-13    EARLINE MILES    MOTION TO DISMISS CASE  
DPC-2                    Mary Ellen Terranella                    3-16-16 [[72](#)]

**Final Ruling:** No appearance at the April 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.

52. [14-28968](#)-E-13 KATHERINE PONGRATZ  
DPC-1 Eric Schwab

MOTION TO DISMISS CASE  
3-16-16 [[18](#)]

**Final Ruling:** No appearance at the April 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.



53. [15-29669](#)-E-13 TIFFANY BAILEY  
Michael Hays

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-22-16 [[27](#)]

**Final Ruling: No appearance at the April 20, 2016 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Tiffany Ann Bailey ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 24, 2016. The court computes that 55 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on February 16, 2016).

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

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.

54. [15-29669](#)-E-13 TIFFANY BAILEY  
Michael Hays

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-21-16 [[39](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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 Tiffany Ann Bailey ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 23, 2016. 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 March 16, 2016).

<b>The court's decision is to sustain the Order to Show Cause and order the case dismissed.</b>
---

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.

55. [15-29669](#)-E-13 TIFFANY BAILEY  
DPC-2 Michael Hays

MOTION TO DISMISS CASE  
3-4-16 [[32](#)]

**Final Ruling:** No appearance at the April 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 March 4, 2016. 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 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 March 4, 2016. Dckt. 32.

The Trustee argues that the Debtor did not commence making plan payments and is \$808.00 delinquent in plan payments, which represents multiple months of the \$404.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case. 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.

56. [14-28170-E-13](#) BARBARA WALTERS  
DPC-2 Stephen Murphy

MOTION TO DISMISS CASE  
3-16-16 [[54](#)]

**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.**

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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 March 16, 2016. 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.

<b>The court's decision is to grant the Motion to Dismiss and dismiss the bankruptcy case.</b>
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 54. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### **DEBTOR'S OPPOSITION**

Barbara Walters ("Debtor") filed an opposition on April 6, 2016. Dckt. 58. The Debtor acknowledges that she fell behind on making plan payments. The

Debtor requests that the Motion be continued to May 18, 2016 so that she can make up the payment.

## **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,253.96 delinquent in plan payments, which represents multiple months of the \$3,115.00 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. Further, Debtor fails to testify as to what caused the default and why Debtor can make up such a substantial default in one fell swoop.

In December 2015, the court confirmed Debtor's Modified Plan. Order, Dckt. 53. Though Debtor had not provided updated financial information to show that the modified plan was feasible, the court confirmed the Plan, stating,

"At the hearing, Debtors counsel confirmed that he would file Supplemental Schedules. The court confirms the plan based on the representation that the financial information is consistent with the prior information. If the information is not consistent or otherwise deficient, the Trustee may seek to dismiss the case or modify the plan."

Civil Minutes, Dckt. 50. The court gave the Debtor, and Debtor's counsel, the benefit of the doubt. As attributed to Oscar Wilde, Clare Boothe Luce, and others, "No good deed goes unpunished." Though confirming the in December 2015, based on Debtor's promise and counsel's representation, Debtor immediately defaulted in the plan payments in January 2016.

Though Debtor's monthly payment is only \$270.00, she has demonstrated that even within the protection of bankruptcy, freed from the hounding of creditors, she cannot make that payment.

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

Findings of 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.

57. [14-26573](#)-E-13 PA LEE  
DPC-4 Marc Caraska

MOTION TO DISMISS CASE  
3-16-16 [[83](#)]

**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.**

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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 March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 79.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,681.90 delinquent in plan payments, which represents multiple months of the \$1,347.81 plan payment.

Trustee also asserts that 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 90 months.

#### **DEBTOR'S OPPOSITION**

On April 7, 2016, Debtor filed an opposition to the instant motion. Dckt. 87 Debtor's counsel alleges that Debtor has paid the delinquent amount and will pay the next installment prior to this hearing. However, Debtor failed (or refused) to so testify under penalty of perjury.

#### **DISCUSSION**

The Trustee's arguments are well-taken. While Debtor's counsel alleges that the delinquency has been paid and the next payment due will be provided for before this hearing, Debtor fails to provide any evidence as to either of these statements. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, Debtor has not addressed the overextended duration of her Plan. The current 90 months until completion exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d).

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. [14-26573](#)-E-13 PA LEE  
DPC-4 Marc Caraska

MOTION TO DISMISS CASE  
3-16-16 [[79](#)]

**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*), Debtor's Attorney, and Office of the United States Trustee on March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 79. FN.1. the Trustee seeks dismissal on the grounds that the Debtor is delinquent in plan payments and that the plan will take 91 months to complete.

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FN.1. It appears that the Trustee's office inadvertently filed two separate Motions to Dismiss under the same DCN. The two motions are signed by different attorneys in the Trustee's office. The court will construe Dckt. 79 as the actual Motion, since there are two grounds stated for dismissal in the Motion.  
-----

#### **DEBTOR'S OPPOSITION**

Pa Lee ("Debtor") filed an opposition on April 6, 2016. Dckt. 87. The Debtor states that the Debtor has paid \$3,681.90 and will have paid the next installment of \$1,347.81 prior to the hearing.

#### **DISCUSSION**



The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,681.90 delinquent in plan payments, which represents multiple months of the \$1,347.81 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). While the Debtor states that the delinquency has been cured, the Debtor does not provide any testimony or evidence that such delinquency has been cured.

Additionally, as calculated out by the Trustee, it appears that the plan will not be able to complete in the statutory maximum period of 60 months. Based on the calculations of what is left to be paid through the plan, the Debtor will need an additional 71 months to pay out all necessary claims. This is improper. 11 U.S.C. § 1322(d).

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.

59. [11-40375-E-13](#) WILLIAM/ERIN EHLE  
DPC-1 Richard Steffan

MOTION TO DISMISS CASE  
3-18-16 [[90](#)]

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

**Final Ruling:** No appearance at the April 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 March 4, 2016. 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 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.

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 4, 2016. Dckt. 29. The Trustee seeks dismissal because of the Debtor's delinquency in plan payments.

#### DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,029.12 delinquent in plan payments, which represents multiple months of the \$3,014.56 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.

61. 10-50178-E-13 MARIA DE LA GARZA  
DPC-2 Timothy Walsh

MOTION TO DISMISS CASE  
3-18-16 [56]

**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 March 18. 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 hearing on the Motion to Dismiss to 3:00 p.m. on June 14, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 18, 2016. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$560.00 delinquent in plan payments, which represents multiple months of the \$280.00 plan payment.

#### **DEBTOR'S OPPOSITION**

On March 30, 2016, Debtor filed an opposition to the instant motion. Dckt. 60. Debtor states that she believes she is current, and completed her plan with her month 60 payment. Debtor further explains that payments have stopped because the court stopped automatic withdrawals after month 60. Debtor is conferring with Trustee to determine what error, if any, exists.

#### **TRUSTEE'S REPLY**

Trustee filed a reply on April 5, 2016, adding that Debtor is overextended because her plan will complete in 124 months. Dckt. 62. Debtor's Amended Plan increased the unsecured creditor dividend to 27%, but to date each claim has only been paid 6.09%. Trustee also adds that the Internal Revenue Service filed a priority claim for the amount of \$1,316.46, which has not been provided for. Trustee continues to assert that while 60 months have passed, Debtor has missed more than one payment.

#### **DISCUSSION**

The Trustee's arguments are well-taken. A plan is not completed by a mere lapse of the temporal period. To complete a plan, a debtor must make all plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has filed a Motion to Modify the Plan. In light of this case having been filed in 2010 and the Debtor investing five years into it, the court continues the hearing on this motion to the time and date of the hearing on the Motion to Confirm.

The court has not reviewed the Motion to Confirm the Modified 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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on June 14, 2016.

62. [15-29479](#)-E-13 ANDRE WILLIAMS  
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-10-16 [[45](#)]

DEBTOR DISMISSED: 02/21/2016

**Final Ruling: No appearance at the April 20, 2016 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Andrea Williams ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 12, 2016. The court computes that 67 days' notice has been provided.

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

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on February 21, 2016 (Dckt. 49), 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.

**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.**

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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 January 20, 2016. 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 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 January 20, 2016. Dckt. 34.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,792.00 delinquent in plan payments, which represents multiple months of the \$2,699.00 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.

At the hearing on February 17, 2016, the court continued the instant Motion to 10:00 a.m. on April 20, 2016. Dckt. 40.

To date, no supplemental papers have been filed.

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.

64. [12-39583](#)-E-13 MARLON/NICOLE GARRETT  
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE  
3-18-16 [[34](#)]

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



65. [14-30884-E-13](#) GARY SWEENEY  
DPC-1 Kristy Hernandez

MOTION TO DISMISS CASE  
3-16-16 [[25](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 16, 2016. 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.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 26.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,400.00 delinquent in plan payments, which represents multiple months of the \$1,200.00 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.

**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 March 16, 2016. 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).

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 16, 2016. Dckt. 142. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

#### **DEBTOR'S RESPONSE**

Paul Bernard Ludovina ("Debtor") filed a response on April 5, 2016. Dckt. 146. The Debtor states that he believed we would have been able to caught up but his business is slow currently. The Debtor states that before the hearing, the Debtor will either be current or will have filed a proposed plan and Motion to Confirm.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,400.00 delinquent in plan payments, which represents multiple months of the \$1,700.00 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 any evidence that the delinquency has been cured nor is there a proposed modified plan filed.

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.

67. [11-49386-E-13](#) CHRISTINA SCOTT  
DPC-7 Mary Ellen Terranella

CONTINUED MOTION TO DISMISS  
CASE  
1-19-16 [[83](#)]

**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 January 19, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 19, 2016. Dckt. 83. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

#### **DEBTOR'S OPPOSITION**

The Debtor filed an opposition on February 3, 2016. Dckt. 87. The Debtor states that she fell behind payments because Debtor's mother had to be hospitalized for just over a week which led to the Debtor losing In Home Health Services income. However, the Debtor states that her mother has returned to live with her and that the Debtor is attempting to take on additional overtime to make up the payment. The Debtor states that she plans on being current by February 11, 2016.

#### **FEBRUARY 17, 2016 HEARING**

At the hearing, the court continued the Motion to 10:00 a.m. on April 20, 2016 to afford the Debtor the opportunity to cure the delinquency.

## DISCUSSION

No supplemental papers have been filed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,662.00.00 delinquent in plan payments, which represents multiple months of the \$1,032.00 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.

68. [15-20787](#)-E-13 KENNETH JOHNSON  
DPC-1 Mark Wolff

MOTION TO DISMISS CASE  
3-18-16 [[31](#)]

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

69. [13-33589](#)-E-13 DANIEL/JOIE SHANE  
DPC-4 Julius Cherry

MOTION TO DISMISS CASE  
3-16-16 [[93](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 16, 2016. 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 March 16, 2016. Dckt. 93.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,350.00 delinquent in plan payments, which represents multiple months of the \$840.00 plan payment. Debtor has not filed an opposition explaining this delinquency or how they would become current. 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.

70.    [16-20089](#)-E-7    JEFFREY STEWART AND    ORDER TO SHOW CAUSE - FAILURE  
                                 MADIHAH ALMUSTAFA-STEWART    TO PAY FEES  
                                 Scott Shumaker    2-12-16 [[45](#)]

CASE CONVERTED: 03/24/2016

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

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The Order to Show Cause was served by the Clerk of the Court on Jeffrey Steward and Madihah Almustafa-Stewart ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 12, 2016. The court computes that 67 days' notice has been provided.

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

<b>The Order to Show Cause is discharged as moot.</b>
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The case having been converted on March 24, 2016 (Dckt. 80), 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.



71. [15-26491](#)-E-13 ROGER SINER  
DPC-3 Bruce Dwiggin

MOTION TO DISMISS CASE  
3-9-16 [[49](#)]

**Final Ruling:** No appearance at the April 20, 2016 hearing is required.  
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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 March 9, 2016. By the court's calculation, 42 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 March 9, 2016. Dckt. 49.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,114.66 delinquent in plan payments, which represents multiple months of the \$2,574.68 plan payment. Debtor has not filed an opposition explaining this delinquency or showing how he will become current. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also 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 January 28, 2016. Dckt. 48. 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).

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.	<a href="#"><u>15-28894</u></a> -E-13	CASSIUS BELL Chinonye Ugorji	MOTION TO DISMISS CASE 3-30-16 [ <a href="#"><u>46</u></a> ]
	DPC-2		

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

73. [14-30097](#)-E-13 IRVIN/THERESA WHITE  
DPC-2 Thomas Amberg

MOTION TO DISMISS CASE  
3-16-16 [[76](#)]

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