

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 22, 2016 at 10:00 A.M.

1. 14-[20101](#)-C-13 GARY/WYRENE DAVIS MOTION TO DISMISS CASE
DPC-1 Mark Wolff 5-25-16 [[45](#)]

Final Ruling: No appearance at the June 22, 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 May 25, 2016. 28 days' notice is required. That requirement was met.

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.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. By the Trustee's calculations, the plan will complete in 196 months exceeding the 60 month statutory cap.

The court has considered the Trustee's reasons for dismissal and finds them to be valid. 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)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 8, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$685 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$685 is due prior to the hearing on this matter. Debtor has paid \$2,055 into the plan to date.
2. After the court sustained objections to confirmation on April 5, 2016, the Debtor failed to file an amended plan.

The court has considered the Trustee's reasons for dismissal and finds them to be valid. 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 April 5, 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 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.

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 May 24, 2016. 28 days' notice is required. That requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$4,056.08 delinquent in plan payments to the Trustee to date with another monthly payment of \$2,704.18 to become due prior to this hearing. Debtor has paid \$36,506.62 into the plan to date.

Debtor's Opposition

Debtor states that an amended chapter 13 plan and corresponding motion to confirm will be filed prior to this hearing.

Discussion

The docket does not reflect that Debtor has filed an amended chapter 13 plan.

The court has considered the Trustee's reason for dismissal and finds it to be valid. At this time, the court does not have proof that all delinquent payments have been cured.

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

is dismissed.

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 8, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to deny the Motion to Dismiss without prejudice. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$6,220 delinquent in plan payments to the Trustee to date with another monthly payment of \$2,220 to become due June 25, 2016. Debtor has paid \$880 into the plan to date.

Debtor's Opposition

Debtor states that an amended chapter 13 plan and corresponding motion to confirm will be filed prior to this hearing.

Discussion

The docket reflects that Debtor filed an amended chapter 13 plan and corresponding motion to confirm on June 10, 2016. The court will not dismiss the case at this time.

Cause does not exist to dismiss this case. The motion is denied.

The court shall issue a minute order 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 denied without prejudice.

5. [16-21503](#)-C-13 BELINDA VIDALES
Candace Brooks

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-16-16 [[23](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on May 14, 2016, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on May 10, 2016).

The court's decision is to discharge the Order to Show Cause.

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

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 81, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. The case was filed on November 4, 2015. Debtor filed an amended plan on February 18, 2016 and has failed to set a confirmation hearing date. The Trustee filed a motion to dismiss for the same issue on April 5, 2016. The court denied the motion because Debtor's counsel explained the reasons for the delay at the hearing.

The court has considered the Trustee's reasons for dismissal and finds them to be valid. A review of the docket shows that Debtor has filed a new plan (dkt. 60) but again failed to file an accompanying motion to confirm 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.

7. [15-25208](#)-C-13 ANGELIQUE ONEILL AND
DPC-2 ANTHONY LOGAN
Peter Macaluso

MOTION TO DISMISS CASE
5-25-16 [[52](#)]

Final Ruling: No appearance at the June 22, 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)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 8, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$4,423.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,423.00 is due prior to this hearing. Debtor has paid a total of \$0.00 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. 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 May 24, 2016. 28 days' notice is required. That requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$12,015.00 delinquent in plan payments to the Trustee to date with another monthly payment of \$6,009.00 to become due prior to this hearing. Debtor has paid \$50,295.71 into the plan to date.

Debtor's Opposition

Debtor, the owner and salaried executive of a healthcare franchise, fell behind on his plan payments because he had to defer his salary after the business received a fraudulent check in the amount of \$4,000, which caused cash flow problems for the business. Debtors state that an amended chapter 13 plan and corresponding motion to confirm will be filed prior to this hearing.

Discussion

The docket does not reflect that Debtor has filed an amended chapter 13 plan, but it does, however, reflect a recent motion to substitute attorney

(dkt. 126) which could explain the absence of an amended plan.

The court has considered the Trustee's reason for dismissal and finds it to be valid. At this time, the court does not have proof that all delinquent payments have 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.

10. [15-21311](#)-C-13 DEANDRA JACKSON
DPC-4 Peter Macaluso

MOTION TO DISMISS CASE
5-24-16 [[99](#)]

Final Ruling: No appearance at the June 22, 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.

11. [15-21912](#)-C-13 ENOCH MARSH
DPC-3 David Foyil

MOTION TO DISMISS CASE
5-24-16 [[123](#)]

Final Ruling: No appearance at the June 22, 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.**

12. [15-23915](#)-C-13 ELIZABETH ARMAS
DPC-2 Timothy Walsh

MOTION TO DISMISS CASE
5-16-16 [[85](#)]

Final Ruling: No appearance at the June 22, 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)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$7,172.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$63,586.00 is due on June 25, 2016. Debtor has paid a total of \$0.00 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. 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. [16-21916](#)-C-13 CHARLES/MARYLOU HODGE
Scott Shumaker

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-1-16 [[43](#)]

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 the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on June 1, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on May 27, 2016).

The court's decision is to discharge the Order to Show Cause.

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.

15. [16-22218](#)-C-13 ROSE NORMAN
DPC-2 Michael Hays

MOTION TO DISMISS CASE
5-27-16 [[22](#)]

Final Ruling: No appearance at the June 22, 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.

16. [15-25320](#)-C-13 MICHELLE BAETGE
DPC-1 Marc Caraska

MOTION TO DISMISS CASE
5-24-16 [[22](#)]

Final Ruling: No appearance at the June 22, 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.

17. [16-21026](#)-C-13 VIRGINIA MARTIN
Peter Cianchetta

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-1-16 [[43](#)]

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 the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on June 1, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on May 18, 2016).

The court's decision is to discharge the Order to Show Cause.

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. [11-46827](#)-C-13 UBONG INYANG
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
5-24-16 [[117](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. 28 days' notice is required. That requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$649.36 delinquent in plan payments to the Trustee to date with another monthly payment of \$300.00 to become due prior to this hearing. Debtor has paid \$6,250.64 into the plan to date.

Debtor's Opposition

Debtor states that the delinquency will be cured by the hearing date.

Discussion

The court has considered the Trustee's reason for dismissal and finds it to be valid. At this time, the court does not have proof that all delinquent payments have 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.

Final Ruling: No appearance at the June 22, 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 May 24, 2016. 28 days' notice is required. That requirement was met.

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.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is 600 delinquent in plan payments to the Trustee to date and the next scheduled payment of 300 is due prior to this hearing. Debtor has paid a total of \$3,600 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. 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 April 15, 2016. 28 days' notice is required. That requirement was met.

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).

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| The court's decision is to deny the Motion to Dismiss without prejudice. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor failed to provide for the post-petition priority claim of the Employment Development Department (Court claim #22) in the amount of \$7,475.61.

Debtor's Opposition

Debtors will provide for the claim of the EDD as Class 4 through business income or gift from a close relative of the Debtors.

Prior

At the hearing on May 18, 2016, Debtor's counsel represented that the post-petition obligation to the Employment Development Department had been paid, using money that was a "gift" from family members. No evidence of such payment or the source of the funds has been provided.

The court continued the hearing and required that Debtor provide admissible, authenticated, credible evidence that the

obligation to the California Employment Development Department has been paid and the source of the monies to pay that debt.

Debtor's Supplemental Declaration (Dkt. 147).

Debtor has filed a supplemental declaration testifying that:

1. The debt with the Employment Development Department of \$7,475.61 was paid by check from Nunez Construction Ent. on 5/13/2016. The check cleared from Debtor's checking account on 5/16/2016.
2. Debtor's source of monies was gifted to me by her son, Dominic Nunez.

Dominic Nunez's Supplemental Declaration (Dkt. 148).

Dominic Nunez, son of Debtors, has filed a supplemental declaration testifying that he gifted his parents, Manuel and Keri Nunez, \$7,475.61 to pay their debt to the Employment Development Department.

Discussion

Based on the evidence provided, the court is persuaded that Debtors have cured the post-petition priority claim of the Employment Development Department (Court claim #22) in the amount of \$7,475.61. Thus Debtors have resolved the Trustee's sole basis for dismissal.

Cause does not exist to dismiss this case. The motion is denied, and the case is not dismissed.

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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)(2) Motion -

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 8, 2016. 14 days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$6,640 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,240 is due on June 25, 2016. Debtor has paid a total of \$0.00 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. 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.

23. [15-21838](#)-C-13 JANET GONZALEZ
DPC-3 Nikki Farris

MOTION TO DISMISS CASE
5-25-16 [[70](#)]

Final Ruling: No appearance at the June 22, 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.

Final Ruling: No appearance at the June 22, 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 May 24, 2016. 28 days' notice is required. That requirement was met.

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.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$1,150 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$575 is due prior to this hearing. Debtor has paid a total of \$5,750 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. 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.

25. [14-24246](#)-C-13 CARL ASMUS AND JODI
DPC-2 CAMPISI ASMUS
Scott CoBen

MOTION TO DISMISS CASE
5-24-16 [[112](#)]

Final Ruling: No appearance at the June 22, 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.

26. [15-28547](#)-C-13 SUN SIN
DPC-2 Mark Wolff

CONTINUED MOTION TO DISMISS
CASE
3-9-16 [[43](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to deny the Motion to Dismiss without prejudice. |
|---|

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$61,900 to date with the last payment received on March 1, 2016. Trustee shows a total of \$66,390 is due, thus Debtor is delinquent \$4,790 in plan payments. Prior to the hearing on this matter, a payment of \$2,395 will come due. As a result, Debtor will need to pay \$7,185 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes Trustee's motion, stating that she fell behind on plan payments due to a death in the family and associated costs to cover funeral expenses. Debtor states she has added more children to her childcare business which will allow her to spread her delinquency over the remainder of her plan and still maintain a budget that she can afford. Debtor asks the court to deny Trustee's motion to dismiss and asserts she will be filing a third modified plan.

DISCUSSION

The court notes that on June 7, 2016, Debtor filed a third modified

plan, Dckt. 84, and motion to modify the plan, Dckt. 82. The court is satisfied that Debtor is taking steps to remedy the delinquency and prosecute her chapter 13 case.

Cause does not exist 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 denied without prejudice and the case is not dismissed.

28. [16-20649](#)-C-13 MARY XIROUHAKIS

Pro Se

ORDER TO SHOW CAUSE -
FAILURE
TO PAY FEES
5-10-16 [[38](#)]

DEBTOR DISMISSED: 05/24/2016

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The case having previously been dismissed, the Order is discharged 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 is discharged as moot, the case having been dismissed.

29. [14-29050](#)-C-13 GLENN/ELIZABETH REICHOW
DPC-1 Nekesha Batty

MOTION TO DISMISS CASE
5-24-16 [[20](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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.

30. [14-29550](#)-C-13 TRISHA MEJIA DONNELL
DPC-3 Mary Ellen Terranella

CONTINUED MOTION TO DISMISS
CASE
3-16-16 [[61](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The case having previously been continued pursuant to stipulation of the parties, Dckt. 68, and the court having approved the stipulation, Dckt. 69, the motion is continued to August 10, 2016 at 10:00 a.m.

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

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

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

IT IS ORDERED that the Motion is continued to August 10, 2016 at 10:00 a.m.

31. [16-21352](#)-C-13 LINDSAY CRAWFORD AND JOHN
BLACKBURN
Mark Shmorgon

ORDER TO SHOW CAUSE -
FAILURE
TO PAY FEES
5-9-16 [[78](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtors, Trustee, and other such other parties in interest as stated on the Certificate of Service on May 9, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on May 3, 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 subject of the Order to Show Cause has been cured.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 25, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c). Class 1 Creditor, JPMorgan Chase Bank, N.A., filed a Notice of Mortgage Payment Change with the court on 01/04/16. This increased the monthly from \$2,983.43 to \$4,559.40, effective 03/01/16. Debtors have not increased the monthly plan payment to account for this change.

DEBTORS' OPPOSITION

Debtors oppose this motion, asserting that they will be filing a modified plan and set it for hearing prior to the hearing on this motion.

DISCUSSION

Although Debtors assert that they will be filing a modified plan and motion to modify plan, the docket reflects that no such action has been taken by Debtors. Debtors are in material default and have not accounted for the monthly increase to Class 1 Creditor, JPMorgan Chase Bank, N.A.

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.

33. [13-34253](#)-C-13 JANET MARTINO
DPC-3 James Bianchi

MOTION TO DISMISS CASE
5-25-16 [[69](#)]

Final Ruling: No appearance at the June 22, 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.**

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Motion to Convert the Bankruptcy Case 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, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. 28 days' notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is continued to August 10, 2016 pursuant to stipulation of the parties.

This Motion to Dismiss the Chapter 13 bankruptcy case of Gary Lagree ("Debtor") has been filed by the Chapter 13 Trustee ("Movant"). Movant asserts that the case should be dismissed or converted based on the following grounds.

1. The Plan exceeds 60 months.
2. After confirmation, Debtor amended his schedules to reveal \$209,397.82 in nonexempt equity. To date, Debtor has failed to propose a modified plan increasing the dividend to unsecured creditors.

DEBTORS' OPPOSITION

The non-exempt assets disclosed by the Debtor are assets held in Slovenia - a Second World country in Southern Europe. At the Trustee's deposition, Debtor further explained that the value of these non-exempt assets at the start of this case (February 26, 2014) was near nothing. These assets appreciated in value thereafter due to Debtor's post-petition efforts such as flying to Slovenia, hiring attorneys in that country, and prosecuting civil actions on behalf of the estate.

LEGAL STANDARD

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

DISCUSSION

On June 15, 2016, parties filed a stipulation to continue this motion to August 10, 2016 on the basis that Debtor's new attorney is working with Trustee to resolve this matter. The motion is continued to August 10, 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 August 10, 2016 at 10:00 a.m.

35. [15-24355](#)-C-13 JASON AIMES AND NICOLE
DPC-1 LEWIS
Peter Macaluso

MOTION TO DISMISS CASE
5-24-16 [[22](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$3,918 to date with the last payment received on March 29, 2016. Trustee shows a total of \$6,530 is due, thus Debtor is delinquent \$2,612 in plan payments. Prior to the hearing on this matter, a payment of \$1,306 will come due. As a result, Debtor will need to pay \$3,918 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor responds stating one payment in the amount of \$1,306 was made to Trustee on May 27, 2016. Debtor will be making an additional payment of \$1,306 on or about June 15, 2016. Debtor will make her upcoming payment of \$1,306 on June 25, 2016. Debtor will file a modified plan and motion to confirm plan to satisfy the remaining delinquency.

DISCUSSION

Although Debtor asserts that one payment of \$1,306 was made in May 2016, and asserts that another payment will be made on June 15, 2016, Debtor has provided no evidence to the court that they are actually current. No testimony, or even argument by counsel, is provided as to why the Debtor has

defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

The docket reflects that no modified plan or motion to confirm has been filed to cure the remaining delinquency in plan payments.

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

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

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

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

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

Final Ruling: No appearance at the June 22, 2016 hearing 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).

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 May 25, 2016. 28 days' notice is required. This requirement was met.

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).

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|--|
| The court's decision is to continue the Motion to Dismiss to August 10, 2016 at 10:00 a.m. pursuant to stipulation. |
|--|

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$169,273.34 to date with the last payment received on March 29, 2016. Trustee shows a total of \$177,368.83 is due, thus Debtor is delinquent \$8,095.49 in plan payments. Prior to the hearing on this matter, a payment of \$4,183.77 will come due. As a result, Debtor will need to pay \$12,279.26 in order to bring the plan current as of the date of this hearing.

DEBTORS' OPPOSITION

Debtors oppose the instant motion, asserting they are only delinquent \$4,183.77 in plan payments because Debtors mailed a payment of \$4,183.77 to Trustee's office on May 20, 2016. They state there was no payment for the month of April. Debtors propose to catch up on the one month delinquency by payment \$6,275.66 by June 20, 2016 and \$6,275.66 by July 20, 2016.

DISCUSSION

Chapter 13 Trustee and Debtors have filed a stipulation, Dckt. 160, to continue the hearing on this matter to August 10, 2016 at 10:00 a.m. in order to resolve an issue with the Wells Fargo mortgage payment change. The court will approve the stipulation.

The court shall issue a minute order 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 August 10, 2016 at 10:00 a.m.

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 May 25, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c). Section 5.03 of the plan provides that if the plan defaults under the plan or if the plan will not complete within 6 months of the stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing.

According to Trustee's calculation, the plan will complete in 129 months not 60 months, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor has promised to but not made increases for previous mortgage increases. Debtor must modify the plan.

DEBTORS' OPPOSITION

Debtors oppose this motion, stating they will file, set, and serve a modified plan prior to this hearing.

DISCUSSION

Despite Debtors' assertions that they would file, set, and serve a modified plan and set it for hearing prior to the hearing on this motion,

the docket reflects that Debtors have taken no such action.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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.

39. [16-22462](#)-C-13 DAWN BASURTO

ORDER TO SHOW CAUSE -
FAILURE
TO PAY FEES
5-24-16 [[24](#)]

Pro Se

Also #40

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, 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 Dawn Basurto ("Debtor"), Trustee, and other parties in interest on May 24, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$20.00 due on May 19, 2016).

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| The court's decision is to sustain the Order to Show Cause and order the case dismissed. |
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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 not been cured. [The following filing fees are delinquent and unpaid by Debtor: [\$20.00].

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

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

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

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

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 May 23, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the first meeting of creditors on May 19, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtor has not complete the Credit Counseling Certificate, required to be filed with the case under Rule 1007(c) and 11 U.S.C. § 521(b).
5. Debtor has failed to list prior filings on the petition. Case No. 11-22759 was filed on June 1, 2011 and was dismissed March 13, 2014.

The Trustee has raised substantial basis for concern, pointing to Debtor's lack of cooperation in the prosecution of this case by failing to appear at the 341 meeting, not providing Trustee with necessary documents, failing to file documents as required by the court, and not disclosing prior cases. 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.

Final Ruling: No appearance at the June 22, 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 May 24, 2016. 28 days' notice is required. This requirement was met.

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.

The Chapter 13 Trustee seeks dismissal of Debtor's on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$49,000 to date with the last payment received on March 7, 2016. Trustee shows a total of \$56,800 is due, thus Debtor is delinquent \$7,800 in plan payments. Prior to the hearing on this matter, a payment of \$3,700 will come due. As a result, Debtor will need to pay \$11,500 in order to bring the plan current as of the date of this hearing.

Debtors offer no opposition. Cause exists to dismiss this case. The motion is granted and the case is dismissed. 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.

42. [15-22968](#)-C-13 ROBERT WAGNER
DPC-4 Bruce Rorty

MOTION TO DISMISS CASE
5-20-16 [[197](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 25, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtors are not in compliance with an Order Granting Motion To Sell, granted February 9, 2016, Dckt. No. 55. Debtors were to sell personal residence located at 8845 Brittany Park Drive, Sacramento, California. \$10,000 of the proceeds were to be turned over to Trustee to be held and released pending a court order for relocation expenses. To date, Trustee has no knowledge of the sale having occurred.

DEBTORS' OPPOSITION

Debtors assert that they have conveyed to their counsel that they wish to keep their Chapter 13 case active if possible. Though the funds that the Trustee seek are no longer available, Debtors have expressed a willingness direct the equivalent amount of the funds to the Trustee, if given a chance to do so over time.

Debtors have had preliminary discussions with their counsel on filing an Amended Chapter 13 Plan to replenish the funds that were to be directed to the Trustee.

In the event that Debtors present a Modified Chapter 13 Plan that sufficiently resolves the Trustee's concerns, Debtors request that the Court deny the Trustee's Motion to Dismiss Case.

DISCUSSION

Debtors have opposed Trustee's motion, but not addressed the issue at hand. Trustee inquires as to the status of the sale that was to occur pursuant to court order, Dckt. No. 55, and the funds that were to be turned over to trustee of \$10,000. Debtors reply by stating that "the funds that the Trustee seek are no longer available," without informing the court if the sale has occurred at all, nor an explanation as to why the funds are no longer available. Further Debtors state that they may filed an amended plan to "replenish the funds" that were to be directed to the Trustee. The court docket reflects that no modified plan has been filed or set for hearing.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by 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 May 24, 2016. 28 days' notice is required. This requirement was met.

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).

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$900 to date with the last payment received on April 4, 2016. Trustee shows a total of \$1,200 is due, thus Debtor is delinquent \$300 in plan payments. Prior to the hearing on this matter, a payment of \$150 will come due. As a result, Debtor will need to pay \$450 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes this motion, stating that a few unexpected monthly expenses made Debtor delinquent, but now she is back on track and plan on bringing payments current prior to the hearing on the instant motion.

DISCUSSION

Although Debtor has provided a declaration explaining that she has had a few unexpected expenses and expressing her intent to be current by the date of hearing, Debtor does not offer any explanation as to how she expect to cure this default on Debtor limited projected disposable income. Further, to date, no evidence has been presented that the Debtor has actually cured the delinquency.

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 May 24, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$24,600 to date with the last payment received on May 11, 2016. Trustee shows a total of \$25,600 is due, thus Debtor is delinquent \$1000 in plan payments. Prior to the hearing on this matter, a payment of \$3,200 will come due. As a result, Debtor will need to pay \$4,200 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes this motion, stating in his declaration that he has cured the delinquency and will pay \$1,200 more within a week to fulfill the May 25, 2016 payment.

DISCUSSION

Although Debtor has submitted a declaration averring that he has paid an amount to cure the delinquency and that he would pay a sufficient amount to fulfill the May 2016 payment, the court has not received confirmation from the Chapter 13 Trustee that the delinquency has actually been cured. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$2,940 to date with the last payment received on March 18, 2016. Trustee shows a total of \$3,780 is due, thus Debtor is delinquent \$840 in plan payments. Prior to the hearing on this matter, a payment of \$420 will come due. As a result, Debtor will need to pay \$1,260 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes this motion, stating he has decreased the number of hours at work and that he will be current by the date of hearing on the motion.

DISCUSSION

Although Debtor has stated his intent to be current by the date of hearing, he has not provided evidence to the court that he is actually current. No testimony, or even argument by counsel, is provided as to why the Debtor has defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. In contending that Debtor would be "current" by the time of the hearing, the Debtor fails (or

refuses) to provide any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

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.

Final Ruling: No appearance at the June 22, 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 May 25, 2016. 28 days' notice is required. This requirement was met.

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.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. The Trustee seeks to dismiss the case on the basis that the Debtor is in material default under the terms of the confirmed Plan, the Plan now requiring 125 months to complete. This is in excess of the 60 month statutory maximum imposed by 11 U.S.C. §1322(d). The default was created by secured claims as filed exceeded the amount scheduled by \$8,669.30. Moreover, the plan calls for an increase in plan payments that the debtor has not adhered to.
2. Debtor is \$5,800 delinquent in plan payments to the Trustee. Debtor has paid \$26,100 into the plan to date, and another \$2,800 will become due prior to hearing.

Debtors offer no opposition. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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. [16-20081](#)-C-13 BEVERLY GOODROW

Dale Orthner

ORDER TO SHOW CAUSE -
FAILURE
TO PAY FEES
5-12-16 [[31](#)]

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Beverly Goodrow ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 12, 2016.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on May 9, 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 subject of the Order to Show Cause has been cured.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 17, 2016. 28 days' notice is required. This requirement was met.

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).

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in default under the terms of the plan, and Debtor has not cooperated with Trustee. Trustee has requested the 2015 state and federal tax returns and any tax refunds received in excess of \$2,000 pursuant to the terms of the order confirming plan, Dckt. 71. Trustee has sent a letter and emails to debtor and counsel since February 2016.

DEBTOR'S OPPOSITION

Debtors respond stating that Debtor sent the requested documents to Trustee via email on May 27, 2016.

DISCUSSION

Although Debtors have stated that they have sent the documents via email, they have not provided evidence to the court upon which the court may rely to substantiate this claim. Further, Debtors do not explain their lack of cooperation, or why it was necessary for trustee to file a motion to dismiss in order to coerce their participation 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.

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 May 25, 2016. 28 days' notice is required. This requirement was met.

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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$75,807 to date with the last payment received on April 5, 2016. Trustee shows a total of \$77,770 is due, thus Debtor is delinquent \$1,963 in plan payments. Prior to the hearing on this matter, a payment of \$1,752 will come due. As a result, Debtor will need to pay \$3,715 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes this motion stating that he has now paid \$1,752 May plan payment and is once again current.

DISCUSSION

Although Debtor states that he has cured the default by paying \$1,752 for the May plan payment, trustee noted in the motion to dismiss that in order to bring the plan payments current by the date of hearing, a total of \$3,715 will have to be paid by Debtor. Debtor's opposition makes clear that less than half that amount was paid in order to cure the delinquency. 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.

Final Ruling: No appearance at the June 22, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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.
