

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

June 22, 2016 at 10:00 a.m.

1.	16-21102 -E-13	LARRY VINCELLI	CONTINUED MOTION TO DISMISS
	DPC-2	Bonnie Baker	CASE
			4-20-16 [30]

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.

June 22, 2016 at 10:00 a.m.

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2. [14-30704-E-13](#) KEVIN FLOYD
DPC-4 W. Scott de Bie

MOTION TO DISMISS CASE
5-25-16 [[76](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 76. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments

DEBTOR'S DECLARATION

Kevin Floyd ("Debtor") filed a declaration in response on June 7, 2016. Dckt. 81. The Debtor states that the Debtor injured his shoulder and this cause him to be off work for a time, thus reducing his earnings. The Debtor asserts that he is now recovered and back to work.

The Debtor asserts that he paid \$2,200 of the delinquency on May 31, 2016 and will be able to cure the balance of the delinquency, making the plan current, by June 21, 2016.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,071.75.00 delinquent in plan payments, which represents more than one month of the \$2,875.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

3. [13-35706](#)-E-13 **ARRON/FELICIA CARRILLO** **MOTION TO DISMISS CASE**
DPC-1 **Peter G. Macaluso** 5-24-16 [[26](#)]

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.

4. [15-21707](#)-E-13 JUDITH LAYUGAN
DPC-4 Thomas L. Amberg

MOTION TO DISMISS CASE
5-24-16 [[173](#)]

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.

5. 16-20507-E-13 LABARRON ROBINSON MOTION TO DISMISS CASE
DPC-2 Matthew DeCaminada 5-25-16 [[26](#)]

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.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

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

The Motion to Dismiss is ~~XXXXXXXXXXXXXXXXXXXX~~.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 73. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Debtor filed an opposition on June 8, 2016. Dckt. 70. The Debtor state that he will make every effort will be made to cure the arrearage in payments to the Trustee.

DEBTOR'S DECLARATION

Jennifer Rianda ("Debtor") filed a declaration in response on June 8, 2016. Dckt. 78. The Debtor states she will be able to catch up on the delinquency of \$21,000.00 if the contracts with her clients are paid. The Debtor claims that her clients are state and federal agencies who can often be delayed by various political approval processes such as elections, taxation cycles, budget approval cycles, public opinion pressures, and holiday hiatus.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor

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

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. A promise to be current on or before the hearing is not evidence that the delinquency has been cured.

Repeat Plan Defaulter

The court also notes that this is not Debtor's first bankruptcy case. She filed a Chapter 13 case (represented by the same counsel as in this case) on March 19, 2013. Bankr. E.D. Cal. 13-23661. The first bankruptcy case was dismissed on July 1, 2013, due to Debtor's failure to make any payments in that case. *Id.*; Civil Minutes, Dckt. 32.

This bankruptcy case was filed on April 9, 2015. On June 1, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, asserting that Debtor was \$9,500.00 delinquent in payments, having failed to make any payments in this case. Motion, Dckt. 30. The motion was denied without prejudice based on the Debtor having cured the default. Civil Minutes for June 24, 2016 hearing, Dckt. 40.

On December 14, 2015, the Chapter 13 filed another motion to dismiss this case based on the Debtor being \$26,250.00 delinquent in plan payments. Motion, Dckt. 60. Debtor's explanation as to why she was in default was the same as for the present motion, "payment delayed by political approval processes." Opposition, Dckt. 64. The court issued a conditional order of dismissal. Order, Dckt. 67. The Chapter 13 Trustee did not lodge with the court an order dismissing the case, which indicates that Debtor cured the \$26,250.00 arrearage and made the next \$10,500.00 plan payment as specified in the conditional order of dismissal.

The Trustee is back, on a third Motion to Dismiss based on a \$21,000.00 plan default. Motion, Dckt. 73. In opposition, Debtor provides her "stock response" that it is the "political approval process" which caused the default. Opposition, Dckt. 77. This opposition appears to be a cut and paste of the prior to oppositions. This identical opposition, caused by the third default strains the bounds of credibility.

The confirmed Chapter 13 Plan requires monthly plan payments of \$10,500.00. Amended Chapter 13 Plan, Section 6; Dckt. 49. The monthly payment is used to pay:

	Monthly Payment
A. Debtor's Counsel Fees of \$4,000.00.....	\$ 66.66 (average)
B. Chapter 13 Trustee Fees (Est. 7%).....	\$ 735.00
C. Monthly Mortgage Payment of:	
1. Regular Monthly Payment.....	\$5,272.00
2. Arrearage (\$266,357.18) Payment...	\$4,400.00
D. Unsecured Claims (\$42,000).....	\$ 700.00

Debtor's ability to make the plan payments is premised on the financial information provided in Schedule I and Supplemental Schedule J. This information is summarized as follows.

INCOME	Debtor	Non-Debtor Spouse		
Gross FN.1.	\$4,500	\$10,000		
Taxes, Social Security	(\$1,156)	(\$3,681)		
FTB Garnishment		(\$1,580)		
Bonus	\$1,500	\$4,000		
			Total Take Home Income Reported	
Take Home Income	\$4,845	\$8,739	\$13,584	
EXPENSES	Supplemental Schedule J			
Total	(For Two Adults)		(\$2,937)	
Significant Expenses				
Home Maintenance		(\$200)		
Water/Sewer/Garbage		(\$32)		
Cell Phone		(\$22)		
Food and Housekeeping Supplies		(\$350)		
Clothing/Laundry		(\$180)		
Personal Care Products		(\$90)		
Transportation (gas, maintenance, registration)		(\$148)		
Charitable Contributions		\$0		
Life Insurance		\$0		
Cosmetics		(\$50)		
Pet Care		(\$200)		
Incidentals		(\$145)		
Legal Costs		(\$200)		

Looking at the above, it appears that the Debtor's defaults may be caused more by an unrealistic budget for two adults living in a \$1,150,000 home (Schedule A) and driving two older vehicles (2005 Infinity and 1998 Navigator with 304,495) which are prone to require more significant repairs than routine maintenance.

Conflicting Information

As originally stated under penalty of perjury, on Schedule H, Debtor states under penalty of perjury that there are no codebtors on any of her obligations. Dckt. 1 at 20. On Schedule I, Debtor states under penalty of perjury that her non-filing spouse has monthly income of \$14,000.00 (wages and monthly bonus). *Id.* at 21-22.

On Schedule A Debtor states under penalty of perjury that she owns the real property known as 4441 Blackberry Lane, Loomis, California (community property) with a value of \$1,150,000.00 and subject to secured claims in the amount of (\$848,000.00). *Id.* at 1. The one creditor listed as having a lien on the real property is stated on Schedule D to be Bank of America. *Id.* at 16.

On the Statement of Financial Affairs, in response to Question 1, Debtor lists her "Husband" having income for 2014, 2013, and 2012. *Id.* at 26.

However, in response to Question 16 of the Statement of Financial Affairs Debtor states under penalty of perjury that she has no spouse and does not disclose the name of any spouse. *Id.* at 30.

On August 6, 2015, Debtor filed an Amended Schedule H which lists Daniel Patrick Desmond, with the same address as Debtor, as a co-debtor on the Bank of America Obligation. Dckt. 55 at 7. Debtor also filed an Amended Statement of Financial Affairs in which she discloses the name of her spouse - Daniel Patrick Desmond. *Id.* at 55.

Status of The Simi Group, Inc.

The employer of both the Debtor and non-debtor spouse is listed as Simi Group, Inc. When the court reviewed the Secretary of State Website, the status for the corporation with the name The Simi Group, Inc., at the same address as listed on Schedule I for Debtor's and non-debtor spouse's employer, is stated to be Suspended. A LEXIS-NEXIS search states that the Secretary of State reports that the suspension has been in effect since November 2012. FN.1.

https://w3.lexis.com/research2/pubrec/searchpr.do?_m=037b2d115ea9a1d8014b5a053a233869&_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkAb&_md5=dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1

The person listed as the president of The Simi Group, Inc. by the Secretary of State is Daniel Patrick Desmond. A search of this court's files discloses that Daniel Patrick Desmond has filed three recent bankruptcy cases. Bankr. E.D. Cal. Nos. 12-38387, 13-3555, and 14-31728. In each of his three cases, Mr. Desmond has been represented by the same attorney as the Debtor in this case.

Expenses

In Mr. Desmond's most recent Chapter 13 bankruptcy case, 14-31728, the case was commenced on November 13, 2014, and dismissed on February 19, 2015. On Schedule A, Mr. Desmond states that he owns (community property) the 4411 Blackberry Lane, Loomis, California property with a value of \$1,150,000.00 and subject to a secured claim in the amount of (\$848,000.00).

In his bankruptcy case, Mr. Desmond (represented by the same counsel as Debtor) states under penalty of perjury that the monthly expenses for Mr. Desmond and Debtor are (\$5,945), and include the following:

A.	Home Maintenance (for \$1,150,000 home).....	(\$325)
B.	Electricity/Gas.....	(\$325)
C.	Water/Sewer/Garbage.....	(\$175)
D.	Cell Phone.....	(\$175)
E.	Food/Housekeeping Supplies.....	(\$550)
F.	Clothing/Laundry.....	(\$245)
G.	Personal Care Products.....	(\$290)
H.	Transportation.....	(\$520)
I.	Vehicle Registration.....	(\$ 35)
J.	Charitable Contributions.....	(\$100)
K.	Life Insurance.....	(\$ 25)
L.	Life Insurance.....	(\$135)
M.	Cosmetics.....	(\$ 50)
N.	Pet Care.....	(\$350)
O.	Accounting/FTB Payment.....	(\$600)
P.	Incidentals.....	(\$145)
Q.	Legal Costs/IRS Payment.....	(\$750)

While not all of the above may be reasonable, they are closer to something which is realistic that the Debtor's Supplemental Schedule J. Debtor's statements under penalty of perjury as to expenses appear to be what the court has referred to as a "Liar's Declaration," stating whatever numbers will allow the Debtor to get the bottom line plan number.

Simi Group, Inc.

Neither Mr. Desmond nor the Debtor list any ownership interest in Simi Group, Inc. on their respective schedules. In addition to identifying the address of the Simi Group, Inc., the Secretary of States reports that Daniel Desmond is the agent for service of process. LEXIS-NEXIS identifies Mr. Desmond as the president.

Whether owned by Debtor or not, it appears that the Simi Group, Inc. is not an entity authorized to do business in California.

Claims

The only creditors listed in the bankruptcy case are: (1) Bank of America (Secured Claim), (2) No Priority Claims, and (3) Leland Rianda for a \$42,000 general unsecured claims. Schedules D, E, and F; Dckt. 1.

RULING

Cause exists to grant the Trustee the relief requested. However, it

appears that it may be in the best interest of creditors to convert the case to one under Chapter 7 rather than dismiss it.

At the hearing, ~~xxxxxxxxxx~~.

The court shall issue a minute order 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 xxxx.

7. [13-24610](#)-E-13 DAX/TINA CHAVEZ
DPC-5 Peter G. Macaluso

MOTION TO DISMISS CASE
5-25-16 [[76](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 76. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Debtors filed an opposition to the instant Motion on June 8, 2016. Dckt. 80. The Debtors respond and state that Debtors will be current on or before the hearing on this matter.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,718.00 delinquent in plan payments, which represents multiple months of the \$2,377.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been completely cured. A promise to be current on or before the hearing is not evidence that the delinquency has been cured.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.
The court shall issue a minute order substantially in the following form holding that:

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

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

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

8. 14-28410-E-13 KEVIN/SHANNON SECRIST MOTION TO DISMISS CASE
DPC-1 Michael O'Dowd Hays 5-24-16 [[22](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on May 25, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 22.

DEBTORS' OPPOSITION

The Debtors filed an opposition on June 8, 2016. Dckt. 26. The Debtors acknowledges the deficiency which was caused by personal family emergencies with their son and wife's mother that required unbudgeted out of state plane flights. The Debtors state that they are planning to file a modified plan to cure delinquency and to lower the plan payments.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,440.00 delinquent in plan payments, which represents multiple months of the \$1,820.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured nor has the Debtor filed a modified plan or Motion to Confirm.

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

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

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

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

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

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

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

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

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. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 8, 2016. Dckt. 59.

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 26, 2016. Dckt. 57. 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.

10. [14-21316](#)-E-13 SHAWN JACKSON
DPC-1 Peter L. Cianchetta

CONTINUED MOTION TO DISMISS
CASE
4-15-16 [[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 April 15, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is continued to 3:00 p.m. on July 26, 2016.
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 15, 2016. Dckt. 45. The Trustee seeks default due to the Debtor being in material default under the plan.

The Trustee seeks dismissal on the ground that the Debtor is in material default under the plan. Namely, the Trustee asserts that the Debtor failed to provide for the priority claims of Sacramento County Dept. Child Support Services (Proof of Claim No. 11) in the amount of \$1,644.74 and the Internal Revenue Service (Proof of Claim No. 2) in the amount of \$298.00. Pursuant to § 2.13 of the plan, this failure to provide is a material default under the plan.

At the May 18, 2016 hearing, the court continued the hearing to allow the Debtor the opportunity to file and serve a modified plan. Dckt. 49.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 50, 52. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Debtor having acted to modify the plan and doing so in a manner

consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the Motion is continued to 3:00 p.m. on July 26, 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 3:00 p.m. on July 26, 2016.

11.	<u>15-26319</u> -E-13	VIRGINIA PAYTON	MOTION TO DISMISS CASE
	DPC-1	Mary Ellen Terranella	5-23-16 [<u>32</u>]

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 Debtors, Debtors' Attorney, and Office of the United States Trustee on May 25, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 68. The Trustee seeks dismissal due to the Debtor's delinquency.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on The Debtors respond by acknowledging the Trustee's allegations of the delinquency and affirm to the court that they will be current under a modified plan by the time of this hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,750.00 delinquent in plan payments, which represents multiple months of the \$3,875.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. A promise to be current on or before the hearing is not evidence that the delinquency has been cured. Furthermore, a modified plan has not been filed with this court.

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

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

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

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

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

13.	14-28724-E-13	VICTORIA MONSCOUR	MOTION TO DISMISS CASE
	DPC-2	Gary Ray Fraley	6-1-16 [35]

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.**

14. [15-27124](#)-E-13 MARIA ZENO
DPC-3 Scott J. Sagaria

MOTION TO DISMISS CASE
5-13-16 [[61](#)]

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 13, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 13, 2016. Dckt. 61. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Debtor's Opposition to the Chapter 13 Trustee's Motion to Dismiss was filed on June 8, 2016. The Debtor concurrently filed a declaration stating that she was delinquent because she was forced to pay to get the vehicle out of impound before the storage fees ran too high. She states that her finances are again stable and she believes she will be able to bring her plan payments current prior to the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,115.00 delinquent in plan payments, which represents multiple months of the \$1,005.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the

delinquency has been cured.

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

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

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

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

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

15. [16-22524](#)-E-13 THOMAS EKUNWE AND NAHID MOTION TO DISMISS CASE
DPC-2 FALAHATI 5-23-16 [[12](#)]
Seth L. Hanson

Final Ruling: No appearance at the June 22, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on May 23, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 23, 2016. Dckt. 12.

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C.

§ 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

16. [15-28525](#)-E-13 CORNELL/BARBARA TINDALL MOTION TO DISMISS CASE
DPC-2 Nicholas B. Lazzarini 5-20-16 [[43](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on May 20, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2016. Dckt. 43. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments and delay in filing a timely plan following the denial of the last.

DEBTORS' OPPOSITION

On June 3, 2016, Debtors filed an Amended Chapter 13 Plan calling for (2) payments of \$1,849.50 and fifty-eight (58) payments of \$1,609.34. This new plan is set for hearing on July 19, 2016. Debtors claim that the delinquency is only \$587.62 based on the amounts already paid into the plan and the projected future payments. Debtors state that the delinquency will be paid prior to hearing on this Motion.

TRUSTEE'S SUPPLEMENTAL DECLARATION

Kari Stewart, an employee at the Trustee's office, filed a supplemental declaration on June 13, 2016. Dckt. 55. Ms. Stewart reports that under the amended plan, the Debtor is \$587.62 delinquent.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,788.42.00 delinquent in plan payments, which represents one month of the \$1,849.50.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee'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 26, 2016. A review of the docket shows that Debtor has filed a new plan.

The Motion to Confirm is set for hearing at 3:00 on July 19, 2016. Dckt. 47. However, even though the Debtor filed a modified plan, the Trustee reports that the Debtor remains delinquent in the amount of \$587.62. The court cannot and will not confirm a modified plan when under those proposed terms the Debtor remains delinquent. In this case, the fact the Debtor remains delinquent even under the terms of the proposed modified plan which is cause to dismiss the case.

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

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

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

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

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

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

17. [15-27433](#)-E-13 MARCO/MONICA ROMO
DPC-1 W. Steven Shumway

MOTION TO DISMISS CASE
5-23-16 [[17](#)]

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 23, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 23, 2016. Dckt. 17.

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year or evidence of current income for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3); Confirmed Plan, Dckt. 5, § 5.02. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

18. [15-26936](#)-E-13 MATTHEW ACACIO
DPC-1 W. Scott de Bie

MOTION TO DISMISS CASE
5-25-16 [[24](#)]

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 24.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,550.00 delinquent in plan payments, which represents one month of the \$2,550.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor failed to file a timely response to the instant Motion.

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

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

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

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

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

19. [15-29038](#)-E-13 KEVIN/COREN TRIGALES MOTION TO DISMISS CASE
DPC-1 Ashley R. Amerio 5-24-16 [[75](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 75. The Trustee seeks dismissal based on the Debtor's delinquency in plan payments.

DEBTORS' REPLY

Debtors filed a Reply to Trustee's Motion to Dismiss Chapter 13 Case on June 7, 2016. Dckt. 78. Debtors assert that, while the Debtors became delinquent in their payments for April 2016 and May 2016 due to unforeseen medical complications, the Debtors have confirmed that every effort will be

made to cure the arrearage in payments to the Trustee, estimated at \$15,880.00 by the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,940.00 delinquent in plan payments, which represents one month of the \$7,940.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 37. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Motion to Dismiss on June 6, 2016. Dckt. 41. Debtor states that she anticipates becoming current on or before the date of the hearing and in the even Debtor is unable to become current, Debtor anticipates filing a modified plan on or before the date of the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$875.00 delinquent in plan payments, which represents less than one month of the \$1,075.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. The docket also shows that the Debtor did not file any proposed modified plan nor Motion to Confirm.

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

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

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 (Pro Se), and Office of the United States Trustee on May 20, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2016. Dckt. 25.

The Trustee argues that the Debtor did not commence making plan payments and is \$75.00 delinquent in plan payments, which represents one month of the \$75.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to timely respond to the instant Motion.

Multiple Bankruptcy Filings

A review of the court's file indicates that this is the Debtor's fourth bankruptcy case since July 2010. Cases filed by Debtor since 2010 are:

- a. 10-38189 - Chapter 7
 - i. Discharge Entered.....October 26, 2010.
- b. 12-32679 - Chapter 13
 - i. Filed.....July 9, 2012
 - ii. Dismissed.....July 20, 2012
- c. 15-27246 - Chapter 13
 - i. Filed.....September 14, 2015
 - ii. Dismissed.....January 27, 2016

In looking at the most recent case, it was dismissed due to Debtor failing to fulfill the basic obligations in that case - attending the First Meeting of Creditors, providing tax records, providing pay advices, and make plan payments. 15-27246; Civil Minutes for Motion to Dismiss, Dckt. 44.

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

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

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

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

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

22. [15-27047](#)-E-13 PRISCILLA/ANDREW CARRASCO MOTION TO DISMISS CASE
DPC-2 Peter G. Macaluso 5-25-16 [[102](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 102.

DEBTORS' OPPOSITION

Debtor's filed an Opposition to Trustee's Motion to Dismiss on June 6, 2016. Dckt. 106. The "opposition" states, in its entirety:

COME NOW DEBTORS, Priscilla R. & Andrew Carrasco, by and through their attorney of record, Peter G. Macaluso, and oppose the Motion of the Chapter 3 Trustee to dismiss the Chapter 13 Case.

Debtors respond and that

WHEREFORE, Debtors request that the Trustee's Motion be denied

Dated: June 6, 2016

/s/Peter G. Macaluso
Peter G. Macaluso,
Attorney at Law

Dckt. 106 (emphasis added).

DISCUSSION

Grounds for Dismissal

First, to address the Motion to Dismiss, itself, the court finds cause to grant the Motion.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,346.00 delinquent in plan payments, which represents multiple months of the \$2,154.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on 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).

Substance of Opposition

The Opposition states the following grounds, consistent with the warranties arising under Federal Rule of Bankruptcy Procedure 9011 that the Debtors....."oppose the Motion of the Chapter 13 Trustee to Dismiss the Chapter 13 case." Based upon those facts and legal argument Debtors plead that the motion be denied. Unfortunately, Debtors merely stating that the "oppose" the motion is not an incantation which defeats the Chapter 13 Trustee.

This opposition is concerning for another reason. It is significantly out of character for Debtor's counsel. It is as if it was not prepared by an attorney, but by a staff member or paraprofessional who is "practicing law," and then merely types the attorney's name on the pleading.

Though someone filed a piece of paper stating "Debtors oppose," it fails to provide the court with a basis for denying the Motion. The delinquency remains.

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

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.

24. [15-22449](#)-E-13 LUCIANO/MAGELIN VENTURA MOTION TO DISMISS CASE
DPC-2 Mark A. Wolff 5-24-16 [[44](#)]

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.

25. [13-35350](#)-E-13 GEORGIA GOODSON
DPC-1 Gary D. Greule

MOTION TO DISMISS CASE
5-24-16 [[31](#)]

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 31.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$740.00 delinquent in plan payments, which represents multiple months of the \$285.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

26. [16-20250](#)-E-13 INES/ANGELINA MORENO MOTION TO DISMISS CASE
DPC-2 Bruce Charles Dwigins 5-20-16 [[33](#)]
WITHDRAWN BY M.P.

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**

27. [11-48051](#)-E-13 JEFFREY/MELINI MANIBUSAN MOTION TO DISMISS CASE
DPC-3 Scott D. Hughes 5-24-16 [[38](#)]

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 24.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,346.00 delinquent in plan payments, which represents multiple months of the \$1,673.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

28. [14-27351](#)-E-13 DAVID/JANNAVIE HICKMAN MOTION TO DISMISS CASE
DPC-1 Mikalah R. Liviakis 5-17-16 [[40](#)]
WITHDRAWN BY M.P.

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.**

29. [16-20252](#)-E-13 LEONARD SCROGGINS
Mark W. Briden

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-9-16 [[77](#)]

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 Leonard Earl Scroggins ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 9, 2016. The court computes that 44 days' notice has been provided.

The Order to Show Cause was issued due to Debtor's failure to pay the filing fee for the following documents in this case: \$30.00.

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

The court's docket reflects that the default has been cured. The filing fee for the above document has been paid by Debtor.

The court shall issue a minute order 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.

30. [13-35754-E-13](#) MATTHEW/ARIANA VICKERS MOTION TO DISMISS CASE
DPC-4 W. Steven Shumway 5-24-16 [[90](#)]

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 90.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,880.00 delinquent in plan payments, which represents one month of the \$6,880.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

The court shall issue a minute order 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.

31. [15-27854-E-13](#) DELANOYE ROBERTSON
DPC-2 Richard L. Jare

MOTION TO DISMISS CASE
5-13-16 [[84](#)]

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 13, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 13, 2016. Dckt. 84. The Trustee seeks dismissal based on the Debtor's delinquency in plan payments and failure to file a Motion to Confirm a Plan.

DEBTOR'S OPPOSITION

Debtor filed an opposition on June 9, 2016. Dckt. 89 The Debtor states that she is in settlement negotiations with Claim Holder #2.

The Debtor's counsel attempts to admitted unauthenticated evidence into the record alleging that the delinquency has been cured.

Additionally, the Debtor's counsel argues that proposing a new plan "this week will hamper the progress already made in settlement negotiations. The Debtor needs more time to propose a new plan." Dckt. 89.

EX PARTE REQUEST FOR CONTINUANCE

On June 7, 2016, the Debtor filed an ex parte request for a continuance of the instant Motion, signed with counsel for Claim Holder #2, based on the ongoing settlement negotiations. The reason for this is for "negotiations would be easier to consummate if the parties could be less concerned with plan confirmation for the next two weeks.

DEBTOR'S STATUS REPORT

The Debtor filed a status report on June 14, 2016. Dckt. 92. The Debtor states that the Trustee has indicated that he will not stipulate to a continuance.

The Debtor states that the settlement is very close in the Utah State court case in judicial foreclosure. The Debtor states that the negotiating parties would like to have another 48 hours to settle.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$251.97 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 1, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor's last plan was denied on March 1, 2016 - over three months ago. The Debtor is now attempting to justify a continuance of the instant Motion due to an unspecified settlement negotiation with an unspecified effect on any unspecified amended plans.

The court will not merely grant continuances for the use of certain words or phrases. Rather, actual cause must exist to justify a continuance.

As evidenced by the Trustee's lack of consent on the continuance, there appears to be no good cause for why the Debtor is both delinquent and has failed to propose a new plan. The Debtor's counsel failed to properly authenticate any evidence proving that the delinquency has been cured, Debtor's counsel failing to have provided a declaration to authenticate the checks.

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

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

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

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

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

32. [15-23156](#)-E-13 GUILLERMO/LURDES MEDINA MOTION TO DISMISS CASE
DPC-1 Joseph M. Canning 5-24-16 [[35](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 35. The Trustee seeks dismissal based on the Debtors delinquency in plan payments.

DEBTOR'S OPPOSITION

Guillermo and Lurdes M. Medina ("Debtor") filed an opposition to the instant motion on June 8, 2016. Dckt. 39. The Debtor states that they are currently gathering funds to bring plan payments current and plan to do so prior to the June 22, 2016 hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,500.00 delinquent in plan payments, which represents multiple months of the \$2,750.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

33. [15-26656-E-13](#) GARY STEPHAN
DPC-3 Dale A. Orthner

CONTINUED MOTION TO DISMISS
CASE
4-26-16 [[87](#)]

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on April 26, 2016. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 26, 2016. Dckt. 87.

MAY 18, 2016 HEARING

At the hearing, the court continued the Motion to 10:00 a.m. on June 22, 2016. Dckt. 97.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 15, 2016 [dckt 83]. 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).

JUNE 22, 2015 HEARING

The Debtor has not filed a response to the instant Motion or any other pleadings since the continuance.

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

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

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

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

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

34.	15-28456 -E-13 DPC-3	GREGORY BRUTUS Mark A. Wolff	MOTION TO DISMISS CASE 5-20-16 [68]
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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.

35. [15-25257](#)-E-13 MEGAN CARR MOTION TO DISMISS CASE
DPC-2 Mikalah R. Liviakis 5-24-16 [[62](#)]

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.**

36. [15-23258](#)-E-13 MOSES/PATRICIA MERCADO MOTION TO DISMISS CASE
DPC-2 Pauldeep Bains 5-25-16 [[30](#)]

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.

37. [13-21559](#)-E-13 EARL MILLER
DPC-2 Timothy J. Walsh

MOTION TO DISMISS CASE
5-25-16 [[35](#)]

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

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

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on August 3, 2016.
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 35. The Trustee seeks dismissal based on Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Earl Lee Miller III ("Debtor") has filed an opposition on June 8, 2016 Dckt. 39. The Debtor states that his family has encountered a series of illnesses and disability. The Debtor states that he suffered a stroke and was forced to take Workers' Compensation for a period of time.

The Debtor reports that due to his own medical issues and wife's cancer, he has had to withdraw from their daughter's college fund to offset the expenses.

The Debtor states that his wife has returned to work and that he has applied for an emergency withdrawal from his ICMA 547 Deferred Compensation Account.

The Debtor requests the Motion be denied.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$81,900.00 delinquent in plan payments, which represents multiple months of the \$6,825.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. While the court is sympathetic to the Debtor's struggles, the Debtor does not provide any evidence or testimony as to how the Debtor expects to not only cure the delinquency of \$81,000.00 and to become current. The Debtor is not proposing to modify the plan nor is there any Motion to Modify on file.

It is also troubling that Debtor fails, or refuses, to provide any testimony as to the events which his counsel argues in the Opposition. The court cannot accept as true arguments of an attorney for which there is no evidence.

Notwithstanding these significant deficiencies, the court's sense is that a series of unfortunate, but all too common, life events have befallen Debtor. Rather than dismissing the case, the court continues the hearing to allow Debtor and his counsel to proceed with a modified plan to address these problems.

Debtor and counsel need to substantively address these defaults, and not merely count on the court further continuing the motion to dismiss. To be clear, DEBTOR AND DEBTOR'S COUNSEL MUST IMMEDIATELY TAKE STEPS TO HAVE THE ARREARAGE CURED, OR HAVE A MODIFIED PLAN SET FOR CONFIRMATION BY THE TIME OF THE CONTINUED HEARING, **OR ELSE THE CASE WILL BE 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on August 3, 2016.

38. [16-22260](#)-E-13 RICHARD/AMBER KESNER MOTION TO DISMISS CASE
DPC-1 Mikalah R. Liviakis 6-7-16 [[18](#)]

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.**

39. [14-31363](#)-E-13 AARON/MARIA MAREADY MOTION TO DISMISS CASE
DPC-2 Guy David Chism 5-24-16 [[119](#)]

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.**

40. [12-23164](#)-E-13 DOROTHEA SARANTIS
DPC-1 Kaushik Ranchod

MOTION TO DISMISS CASE
5-24-16 [[37](#)]

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, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 37.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,526.00 delinquent in plan payments, which represents multiple months of the \$763.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor failed to file a timely opposition to the instant Motion.

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

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

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

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

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

41. [15-28165](#)-E-13 LEON VICENTE AND ANGELA MOTION TO DISMISS CASE
DPC-3 XILOJ 5-25-16 [[58](#)]
Thomas O. Gillis

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.

42. [13-29769](#)-E-13 JOHN JAMES
DPC-3 Peter G. Macaluso

MOTION TO DISMISS CASE
5-23-16 [[133](#)]

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.

43. [14-20671](#)-E-13 CATHERINE TROUT
DPC-2 Richard L. Jare
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
5-24-16 [[38](#)]

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.**

44. [16-22373](#)-E-13 TYFANY FRAZIER
DPC-2 Scott J. Sagaria

MOTION TO DISMISS CASE
6-8-16 [[16](#)]

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

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

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

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 7, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 7, 2016. Dckt. 16. The Trustee seeks dismissal due to Debtor's delinquency in making plan payments.

The Trustee argues that the Debtor did not commence making plan payments and is \$230.00 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

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

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

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

45. [11-32476-E-13](#) PLEXICO MICHAUX
DPC-5 Peter G. Macaluso

MOTION TO DISMISS CASE
5-24-16 [[96](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 24, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 96. The Trustee seeks dismissal due to Debtor's delinquency in making plan payments.

DEBTOR'S OPPOSITION

Plexico B. Michaux ("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 100. The Debtor states that they will be current on or before the hearing in this matter.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,010.00 delinquent in plan payments, which represents multiple months of the \$505.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. A promise to pay is not evidence of payment.

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

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

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

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

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

46. 16-20576-E-13 DANA MAGWOOD AND TRISHA MOTION TO DISMISS CASE
DPC-2 GUTIERREZ-MAGWOOD 5-25-16 [[55](#)]
Gary Ray Fraley

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 55.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,037.21 delinquent in plan payments, which represents multiple months of the \$3,359.07 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to

Debtor's prior plan on April 12, 2016. Dckt. 35. 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).

Unfortunately, the Debtor failed to file a timely opposition to the instant Motion.

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

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

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

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

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 66. The Trustee seeks dismissal because the Debtor is in material default and the Debtor's current plan payment is not sufficient to fund the plan. Namely, the Trustee asserts that Creditor Wells Fargo Bank, N.A. filed a Notice of Mortgage Payment Change on November 9, 2012 from \$1,509.57 to \$1,817.20. The Debtor failed to increase payments. Then, May 9, 2016, the Creditor filed another Notice that the payments were to increase to \$2,313.39 beginning June 15, 2016.

Based on these increased, the Trustee asserts that the Debtor's current plan payment of \$1,833.00 is not sufficient.

The Trustee argues that the remaining amounts to be paid through the plan are Monthly Contract Installment Amounts plus \$3,634.40 Class 1 post petition delinquency to Wells Fargo Bank, N.A., \$276.00 Class 1 post petition delinquency to Natomas Park Master Association plus Trustee's fees.

DEBTOR'S OPPOSITION

Joyce Yvonne Lee ("Debtor") has filed opposition to the instant motion

on June 4, 2016 Dckt. 70. The Debtor declares that Trustee's motion fails to state the amount necessary to cure the delinquency, the amount Debtor must pay for the remainder of her plan, and the amount Debtor should pay each month due to the two mortgage payment changes.

The Debtor's counsel has allegedly informally spoken with Trustee's counsel for the "Trustee state exactly what must be paid prior to the hearing to cure the default and what Debtor should pay each month for the remaining seven months of the plan."

The Debtor also indicates that she is investigating the Notices to determine if the information is correct.

The Debtor states that prior to the hearing, she will pay the amount requests by the Trustee to cure the alleged default. If for some reason this is not possible, Debtor will file a modified plan and motion to confirm that will cure the alleged default.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is estimated \$3,910.40 delinquent in plan payments, which represents multiple months of the \$1,833.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is also in material default under Section 2.08(b)(4)(I) of the plan which requires Debtor to change the plan payment when given notice of a payment change in accordance with Fed. R. Bankr. P. 3002.1(b) by the holder of a Class 1 claim. Dckt. 28. Class 1 creditor, Wells Fargo Bank, N.A. has filed Notice of Mortgage Payment Change with the court pursuant to Fed. R. Bankr. P. 3002.1(b) and Debtor has not adjusted the plan to comply with the new payment amounts.

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. While the response indicates that the Debtor will be modifying the plan to cure the delinquency, the Debtor has failed to file a proposed modified plan nor a Motion to Confirm.

Amount of Default

The court does not find Debtor's feigned ignorance of the default amounts persuasive. Debtor is responsible for ascertaining her legal and financial positions. If her opposition is that she will pay whatever the Trustee says, then the Motion to Dismiss states,

Effective February 15, 2016 the current monthly mortgage payment increased from \$1,509.57 to \$1,817.20 - which requires Debtor to increase her monthly plan payment beginning with February 2016 by \$308.37. Counting the months - February through June 2016, five months, then the Debtor needs to pay an additional \$1,541.85 through June 2016, and then an additional \$308.37 per month through the end of the Plan.

If Debtor and her counsel believe that money could be reallocated from the dividend for general unsecured claims based on the guaranteed minimum dividend, then Debtor and Debtor's counsel can undertake the legal analysis and

advance that argument. No such argument has been advanced.

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 67.

DEBTORS OPPOSITION

Troy A. Hardin ("Debtor") filed opposition to the instant motion on June 7, 2016 Dckt. 71. The Defendant states that the Debtor will file, set, serve, and be current under a modified plan prior to the hearing on this matter.

TRUSTEE'S EX PARTE MOTION TO DISMISS

The Trustee filed an ex parte Motion to Dismiss the instant Motion in light of the Debtor filing a proposed modified plan and Motion to Confirm on June 20, 2016. Dckt. 78.

The court will address the ex parte request at the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor

is \$3,880.00 delinquent in plan payments, which represents multiple months of the \$2,180.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 105 months. The Debtor's monthly contract installment leaves \$616.83 per month to pay the remaining mortgage arrears (\$43,420.90), secured vehicle including interest (\$7,620.73) and unsecured creditors (3,065.20) total \$54,106.83. Thus 88 months remain in the plan that the Debtor has already completed 17 months. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, cause exists to dismiss.

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. While the response indicates that the Debtor will be modifying the plan to cure the delinquency, the Debtor has failed to file a proposed modified plan nor a Motion to Confirm. A promise to act is not evidence that the curing act has been done.

Modified Plan and Motion to Confirm

Debtor filed a modified plan and motion to confirm on June 17, 2016. The Motion, Dckt. 73, does not appear to comply with 11 U.S.C. § 1329 and state with particularity grounds upon which the court may confirm the proposed modified plan. While advising the court that Debtor had a "plumbing issue" which cause the default, the motion fails to state the minimum grounds for the relief requested.

In reviewing the Debtor's Declaration, Dckt. 75, while long on discussing his trials and tribulations with prior counsel and events during the case, it is short on testimony to support confirmation. Debtor's testimony as to "facts" from which the court may make the necessary findings of fact and conclusions of law are limited to the following:

- A. "15. That I have no Domestic Support Obligations."
- B. "16. That I have filed all tax returns for the last four years prior to the filing of the Chapter 13 case. The last return filed was for tax year 2015 and was filed on or about February 2016."
- C. "18. That I have paid all installment fees, charges, or amounts required prior to confirmation."
- D. "19. I have reviewed all of my assets listed on Schedule A and B and the debts owed against those assets on Schedule D (if any). All of my assets are exempt, as explained to me by my attorney."

Id.

The Declaration further provides the court with Debtor's personal findings of fact and conclusions of law, which he appears to believe will be adopted by the court without evidence being presented:

- A. "17. That the plan complies with the provisions of Chapter 13 and with the other applicable provisions of this title."
- B. " 21. That I am able to make all payments under the plan. The primary source of my income for my household is from CA Cut & Core and I anticipate this income source for the remainder of the plan."
- C. "22. That I will comply with the plan and am able to remit the payments as reflected in the amended Plan."
- D. "23. That I am paying all of my disposable income to my creditors to the best of my ability."

Id.

No basis is given for the Debtor having the legal knowledge and experience (if the court could just adopt a party's personal conclusions of law) to know that the proposed plan complies with the Bankruptcy Code. Rather, it appears that Debtor may not have read any of the Declaration, but merely signed what an attorney, or paraprofessional, put in front of him and said, "sign this, it means you win," irrespective of the truth of what's in there.

The Declaration goes further to indicate that Debtor is unaware of the plan terms, but will merely parrot a provision of 11 U.S.C. § 1325 and state,

" 20. That the plan provides that the holder of each allowed secured claim provided for by the plan either; (1) accepted the plan, (2) retains the lien and securing such claim and the value, as of the effective date of the plan, of property to be distributed is not less than the allowed amount of such claim, or (3) that I surrender the property securing such claim to the lender."

Id. It appears that Debtor has no knowledge, or even idea, of whether he is paying his various creditors pursuant to an agreement, or is forcing a repayment plan on the creditor, or he is surrender his property and walking away from it. This lack of knowledge of his plan terms further impairs the credibility of Debtor's testimony.

As Debtor is represented by an experienced counsel, it is unlikely that actual evidence for these personal conclusions of law and findings of fact exist to be presented to the court. If they existed, they would have been presented by competent, admissible, personal knowledge testimony. Fed. R. Evid. 601, 602.

While "throwing up" a plan and a document titled motion, Debtor is not prosecuting this case in a manner to confirm such plan and cure the default.

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.

49. [16-22677](#)-E-13 ANDRES SUAREZ
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-1-16 [[29](#)]

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 Andres Suarez ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 1, 2016. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on May 27, 2016).

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

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

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

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

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

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

50. [15-24984](#)-E-13 MARIE GARY
DPC-2 Eric W. Vandermey

CONTINUED MOTION TO DISMISS
CASE
4-20-16 [[63](#)]

**APPEARANCE OF ERIC W. VANDERMEY, DEBTOR'S COUNSEL, IS
REQUIRED**

NO TELEPHONIC APPEARANCE PERMITTED

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 20, 2016. Dckt. 63.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,492.00 delinquent in plan payments, which represents multiple months of the \$1,777.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. The Debtor failed to file a timely reply to the instant Motion.

MAY 18, 2016 HEARING

Though the court posted a final ruling the day before the May 18, 2016 hearing, counsel for Debtor appeared and requested that the court hear the matter. Counsel stated that though no response had been filed, Debtor believed should could cure the defaults, having collected some outstanding accounts receivable for her daycare business. It was represented that Debtor made a partial payment the prior week and would be current shortly. The Chapter 13 Trustee advised the court that no payment was reflected in the Trustee's records.

At the hearing, the court was not presented with any evidence that such payment had been made or any good reason why counsel had not filed an opposition. Counsel's only argument was that since he was not sure that the Debtor could cure the default, he did not file a response. As other attorneys know, a response, even if it advises the court and Trustee of how the Debtor may be able to cure the default (or modify the plan), is required.

The court announced at the hearing that the motion would be granted and the case dismissed. The court noted that since Debtor was only paying the current monthly payment and arrearage on her mortgage, and her nondischargeable taxes, dismissal of the case and her filing a new case would not be of prejudice to her. Debtor's counsel noted that the plan included a "lienstrip."

After the hearing, the court considered the possible prejudice to Debtor caused by the failure to file a response. The court also considered the additional litigation which could arise by the filing of a new case and a different result on the two motions to value. In the current case, the two junior lien claims were determined to have values of \$0.00 each as secured claims. Orders, Dckts. 52, 53.

In light of the affirmative representation to the court by counsel that payments have been made and the possible prejudice to Debtor concerning the valuations of secured claims if relitigated, the court continued the hearing. The court also ordered Counsel for Debtor to appear at the continued hearing, no telephonic appearances permitted, and evidence of the payments on the arrearage made prior to the May 18, 2016 hearing be filed and served.

The court, along with continuing the hearing, issued the following orders:

IT IS FURTHER ORDERED that on or before **June 3, 2016**, Debtor **shall** file and serve on the Chapter 13 Trustee and U.S. Trustee admissible, properly authenticated, credible evidence of all payments (which counsel for Debtor affirmatively stated as grounds for the court to continue the hearing) made to the Chapter 13 Trustee prior to the May 18, 2016 hearing to cure the arrearage asserted in the Motion to Dismiss.

IT IS FURTHER ORDERED that Eric W. Vandermey shall appear at the June 22, 2016 hearing, in person, no telephonic appearance permitted. The court does not require the appearance of Debtor in light of her day care business and the adverse impact such appearance may have on such business.

JUNE 18, 2016 HEARING

The Debtor has failed to file any supplemental papers since the court continued the hearing. The Debtor has failed to comply with the court's order to properly serve admissible evidence of all payments.

At the hearing, xxxxxxxxxxxxxxxxx

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,492.00 delinquent in plan payments, which represents multiple months of the \$1,777.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court shall issue a minute order 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.

51. [15-27785](#)-E-13 LATANYA MOORE
DPC-4 Peter G. Macaluso

MOTION TO DISMISS CASE
5-20-16 [[78](#)]

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 20, 2016. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 20, 2016. Dckt. 63. The Trustee seeks dismissal due to the Debtor's delinquency and failure to file a proposed modified plan.

DEBTORS OPPOSITION

LaTanya Moore ("Debtor") filed opposition to the instant motion on June 6, 2016 Dckt. 82. The Defendant states that the Debtor will file, set, serve, and be current under a modified plan prior to the hearing on this matter.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,492.00 delinquent in plan payments, which represents multiple months of the \$1,777.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. While the response indicates that the Debtor will be modifying the plan to cure the delinquency, the Debtor has failed to file a proposed

modified plan nor a Motion to Confirm. A promise to act is not evidence that the curing act has been done.

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.

52. [13-28189](#)-E-13 TONY/MARGARITA CERVANTES MOTION TO DISMISS CASE
DPC-2 Gerald B. Glazer 5-24-16 [[78](#)]

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.

53. [14-30389](#)-E-13 MELISSA JONES
DPC-5 Peter G. Macaluso
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
5-20-16 [[97](#)]

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.**

54. [15-28790](#)-E-13 BRIAN THRONBURG
DPC-3 Thomas L. Amberg

MOTION TO DISMISS CASE
6-8-16 [[52](#)]

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

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. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Dismiss is continued to 3:00 p.m. on August 2, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 8, 2016 Dckt. 52. The Trustee seeks dismissal because the Debtor has filed to file an amended plan and set for confirmation.

The Debtor filed a response on June 16, 2016. Dckt. 63. The Debtor states that he has filed an amended plan which proposes a 100% dividend to allowed creditors. The hearing on the Motion to Confirm is set for 3:00 p.m. on August 2, 2016. The Debtor requests a continuance to the Motion to Confirm hearing date.

The court's review of the Motion to Confirm and proposed modified plan appears to comply with 11 U.S.C. §§ 1322, 1325, 1329 and Fed. R. Bankr. P. 9013.

Due to the interconnectedness of the Motion to Dismiss and the Motion to Confirm, the court continues the instant Motion to 3:00 p.m. on August 2, 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 3:00 p.m. on August 2, 2016.

55.	<u>11-47191</u> -E-13	THOMAS/ROBIN TWIFORD	MOTION TO DISMISS CASE
	DPC-3	Bonnie Baker	5-24-16 [<u>74</u>]

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.

56. [12-41091](#)-E-13 REBECCA GAGE
DPC-6 Peter G. Macaluso

MOTION TO DISMISS CASE
5-24-16 [[95](#)]

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.

57. [16-22092-E-13](#) AMANDA PORRAS
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-6-16 [[28](#)]

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 Amanda Diane Porras ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 6, 2016. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on May 31, 2016).

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

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

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

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

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

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

58. [16-22092](#)-E-13 AMANDA PORRAS MOTION TO DISMISS CASE
DPC-1 Mohammad M. Mokarram 5-23-16 [[22](#)]
WITHDRAWN BY M.P.

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.**

59. [16-21294](#)-E-13 JOSE GODINEZ MOTION TO DISMISS CASE
DPC-2 Mark A. Wolff 5-20-16 [[28](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 20, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2016. Dckt. 28.

Rather than filing a responsive pleading to the instant Motion as required under Local Bankr. R. 9014-1(f)(1), the Debtor and Debtor's counsel

filed a Motion to Confirm the Second Amended Plan and a proposed amended plan. Dckt. 40 and 41. The Debtor appears to expect the court to mine through the case docket to piecemeal any opposition or grounds the Debtor may have to oppose the Motion to Dismiss. The court typically grants Motions to Dismiss when the Debtor and Debtor's counsel fails to respond or oppose with evidence to counter the Trustee's claim.

The Trustee argues that the Debtor did not commence making plan payments and is \$3,625.00 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Therefore, 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

60. [11-48095-E-13](#) MICHAEL NEUMANN
DPC-2 Linda D. Deos

MOTION TO DISMISS CASE
5-25-16 [[133](#)]

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

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

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

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

The Motion to Dismiss is continued to 10:00 a.m. on August 10, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 133. The Trustee seeks dismissal due to material default by the debtor with respect to a term of a confirmed plan and delinquency in payments under the plan.

DEBTOR'S OPPOSITION

Michelle Merlin Neumann ("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 137. The Debtor declared that Debtor will begin new employment on June 20, 2016 and anticipates earning more money than he is with his current job. Debtor's counsel is unable to draft an amended plan in good faith until she has had an opportunity to review Debtor's new financial information, which she does not expect to have by the time of the June 22, 2016 hearing.

TRUSTEE'S REPLY

The Trustee filed a reply on June 14, 2016. Dckt. 139. The Trustee states that he has no opposition to the Motion being continued to the August 10, 2016 hearing date.

DISCUSSION

In light of both the Trustee and Debtor consenting to continuing the instant Motion and for good cause, the court continues the instant Motion to Dismiss to 10:00 a.m. on 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 10:00 a.m. on August 10, 2016.

61. [12-24595-E-13](#) CHRISTOPHER DARLING MOTION TO DISMISS CASE
DPC-4 Peter G. Macaluso 5-24-16 [[81](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 81. The Trustee seeks The Trustee seeks dismissal due to the Debtor's delinquency in making plan payments.

DEBTOR'S OPPOSITION

Christopher Robert Darling ("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 85. The Debtor states that the Debtor will be current on or before the hearing on this matter. Debtor's counsel does not provide any argument as to how Debtor can have more than \$2,639.06 of "extra" cash, when Debtor is already providing all of the projected disposable income

just to make each \$880.00 monthly payment. Debtor fails, or refuses, to provide any testimony under penalty of perjury to support the arguments made by his attorney.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,639.06 delinquent in plan payments, which represents multiple months of the \$880.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. A promise to pay is not evidence of payment.

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

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

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

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

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

62. [15-27296-E-13](#) HOWARD THOMAS
DPC-3 W. Steven Shumway

MOTION TO DISMISS CASE
5-24-16 [[55](#)]

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 55.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,198.00 delinquent in plan payments, which represents multiple months of the \$2,100.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not filed a timely opposition to the Instant Motion. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

63. [15-28596-E-13](#) FLOYDETTE JAMES
DPC-2 Steven A. Alpert

MOTION TO DISMISS CASE
5-25-16 [[44](#)]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 44. The trustee seeks dismissal due to the Debtor being delinquent in plan payments.

DEBTOR'S OPPOSITION

Floydette Ernean James ("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 85. The Debtor states that the Debtor is taking steps to deal with the delinquency and will be filing a modified plan.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,245.96 delinquent in plan payments, which represents multiple months of the \$2,330.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. While the response indicates that the Debtor will be modifying the plan to cure the delinquency, the Debtor has failed to file a proposed modified plan nor a Motion to Confirm. .

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

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

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

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

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

64. 16-23096-E-13 OKSANA HAWK
Andrew A. Moher

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-26-16 [[15](#)]

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 Oskana Hawk ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 26, 2016. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on May 12, 2016, 2016).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

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

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 24, 2016. Dckt. 81. The Trustee seeks The Trustee seeks dismissal due to the Debtor's delinquency in making plan payments.

DEBTOR'S OPPOSITION

Wesley Joe Lauderdale("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 62. The Debtor states that the Debtor will be current on or before the hearing on this matter.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,700.00 delinquent in plan payments, which represents multiple months of the \$3,350.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. A promise to pay is not evidence of payment.

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.