

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

September 9, 2015 at 10:00 a.m.

1. **14-26593-E-13** CATHERINE WILLIAMS SHAW CONTINUED MOTION FOR RELIEF
BEP-1 Christian Younger FROM AUTOMATIC STAY
7-2-15 [[23](#)]
CITY OF SACRAMENTO VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay 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, Chapter 13 Trustee, creditors, and the Office of the United States Trustee on August 20, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion for Relief From the Automatic Stay 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 for Relief from the Automatic Stay is granted.

City of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5003 Argo Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Richard

Leiker, a building inspector assigned to monitor the Property, to introduce evidence to authenticate the documents upon which it bases the claim.

AUGUST 18, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on September 9, 2015 to allow the Movant to file and serve the pleadings and an amended hearing notice to necessary parties. Dckt. 33.

On August 20, 2015, the Movant filed an Amended Notice of Hearing and Certificate of Proof of Service. Dckts. 34 and 35. FN.1.

FN.1. The court notes that the Amended Notice of Hearing states that it is being noticed based on Local Bankr. R. 4001-1(a), which states that a movant shall be set in accordance with Local Bankr. R. 9014-1. The Movant actually moved pursuant to Local Bankr. R. 9014-1(f)(2). The court will sua sponte correct this, given that the Amended Notice does state that no written opposition is necessary.

DISCUSSION OF MOTION

City of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5003 Argo Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Richard Leiker, a building inspector assigned to monitor the Property, to introduce evidence to authenticate the documents upon which it bases the claim.

The Declaration of Leiker states that the Property has been abandoned, and has been in a continually declining state of disrepair since a first inspection on June 30, 2014. Upon further monthly inspections, the declarant found the Property to be in violation of several Sacramento City Code sections, including: 8.100.1200 ("vacant building and/or blight"); 8.100.650 ("hazardous/unsanitary premises"); 8.100.620 ("broken, rotted walls or roof"); 8.100.590 ("inadequate electrical service"); and 8.100.410 (potable water").

The Declaration also states that the Property's garage door had to be secured by The Movant's Housing and Dangerous Buildings Division due to reported break-ins and transient activity. The neighbors are also now reporting a potential rat harborage within the Property.

Congress created an exemption from the automatic stay for which provides, in relevant part, for the exercise of governmental police or regulatory power as follows:

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay-

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority...to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment

other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;....

11 U.S.C. § 362(b)(4).

Commencing judicial proceedings in nonbankruptcy courts by a government unit is within this exception if it satisfies either the "pecuniary purpose" test or "public purpose" test. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1108 (9th Cir. 2005). Under "pecuniary purpose" test, the court must determine that the government action relates primarily to the protection of the government's pecuniary interest in the debtors' property or to matters of public safety and health, and under the "public purpose" test, the court determines whether the government seeks to effectuate public policy or to adjudicate private rights. *Id.*

The Movant seeks to proceed with its abatement action against the Property for public nuisance, which threatens the health, safety, and welfare of the public. Because the government action here is primarily for matters of public health, safety, and welfare in accordance with public policy, the exception to automatic stay applies.

David Cusick, the Chapter 13 Trustee, filed a statement of nonopposition on July 29, 2015.

Debtor's Interest in the Property

On Schedule A Debtor does not list any interest in the Argo Way Property. Dckt. 1 at 9. On her Statement of Financial Affairs, Question 16, Debtor discloses that she and her former spouse, Roosevelt Williams, were divorced in 2012. Dckt. 1 at 29. The court notes that Debtor, and her former spouse, have filed several prior bankruptcy cases with this court. The most recent is case number 08-39481, which was filed on December 31, 2008, in which the Debtor's Chapter 13 discharge was granted on May 27, 2014. (Debtor's counsel in the prior case is the same as her attorney in the current case.) In that case the Argo Way Property was listed as Debtor's residence. 08-39481; Petition, Dckt. 1. The confirmed Modified Chapter 13 Plan in the prior case provided for Class 3 treatment for the claim secured by the Argo Way Property - surrender so that the creditors holding claims secured by the property could foreclose on their collateral.

It appears that Debtor believes that whatever interest she could assert in the property is valueless and intends to have whichever creditors have liens against it (which may include the City of Sacramento for costs and expenses incurred in addressing the health and safety deficiencies concerning the property) enforce those liens to obtain payment on their respective secured claims.

The police power exception is just that, an exception to the automatic stay provisions of 11 U.S.C. § 362(a)(1), (2), (3), or (6). While this obviates the need for the court to "grant relief" from the automatic stay, seeking confirmation that the intended actions do not violate the stay is a proper request. Movant states that it seeks to do the following:

"Accordingly, the City is seeking to proceed with any and all

actions necessary to abate the nuisance and recover any costs incurred whereby the action contemplated by the City falls within the 'police or regulatory powers' exception."

Motion, p.5:2-5.

The evidence presented is that the real property commonly know as 5003 Argo Way, Sacramento, California, has been identified as abandoned property, in disrepair, and suffering from numerous housing code violations. Further, that the disrepair is identified as a the source of possible health concerns.

The court confirms that the automatic stay does not apply to the City of Sacramento taking actions to:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;...

This affords the City to take the necessary action and perform such acts as necessary to obtain possession of and remedy the health and safety violations and concerns. The court does not grant further relief to "collect" from the estate money or property to reimburse the City for the costs of the action taken. Such may be the subject of a future motion for relief from the stay, be provided for in a bankruptcy plan, or, if this bankruptcy case is dismissed, enforced through the non-bankruptcy process.

The court reads the present motion to request that the court also modify the automatic stay to allow the City of Sacramento to enforce any lien rights it may have, or acquire, for the remedial actions taken with respect to the Argo Property in the exercise of its police and regulatory power.

"Accordingly, the City now seeks to proceed with any and all actions necessary to abate the public nuisance and recover costs, if any, incurred therein."

Motion, p. 3:11-12, and 4:13-19; Dckt. 23.

Movant has show cause pursuant to 11 U.S.C. § 362(d)(1) for the court to modify the automatic stay for the additional enforcement relief against the Argo Property, but not cause for the court to terminate the automatic stay to

enforce any monetary obligation against other property of the estate or against the Debtor outside of this bankruptcy case. Debtor does not assert having any interest in the Argo Property on Schedule A. In Debtor's prior bankruptcy case, the court confirmed the Modified Chapter 13 Plan, relying upon Debtor's election to surrender the Argo Property to creditors having claims secured by the property.

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

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

The Motion for Relief From the Automatic Stay filed by City of Sacramento ("Movant") 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 court confirms that pursuant to 11 U.S.C. § 362(b)(4) the below specified automatic stay provisions of the Bankruptcy Code does not apply to the City of Sacramento in the exercise of its police and regulatory power with respect to the real property commonly known as 5003 Argo Way, Sacramento, California:

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; and

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

IT IS FURTHER ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are modified to allow the City of Sacramento to obtain, perfect, and enforce an liens against the real property commonly known as 5003 Argo Way, Sacramento, California, for any obligations of Debtor or other person too the City of Sacramento for reimbursement of costs and expenses to the City from the exercise of the City's police and regulatory powers relating to the above identified real property.

Further or additional relief is denied without prejudice.

2. [15-22811](#)-E-13 DENNIS/KIM CAMPBELL
TJW-3 Timothy Walsh

CONTINUED MOTION TO VACATE
DISMISSAL OF CASE
8-10-15 [[65](#)]

DEBTOR DISMISSED:

06/25/2015

JOINT DEBTOR DISMISSED:

06/25/2015

Tentative Ruling: The Motion to Vacate Dismissal of Case 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, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 10, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

The Motion for Order to Vacate Dismissal 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 Motion for Order to Vacate Dismissal is denied.

Dennis and Kim Campbell ("Debtor") filed the instant Motion for Order to Vacate Dismissal on August 10, 2015. Dckt. 65.

The instant case was filed on April 7, 2015 as a Chapter 13. Dckt. 1. On June 25, 2015, the court issued an order dismissing the case for the

September 9, 2015 at 10:00 a.m.

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Debtor's failure to make plan payments. Dckt. 53.

The Debtor asserts that they attempted to make the plan payments by setting up the automated plan payment program. According to the Debtor, the Debtor created an account with "TFS" on May 28, 2015. The Debtor asserts that they followed the instructions and activated the account. The Debtor states that on July 23, 2015, the Debtor received an email which indicated that the account was suspended because the "bank support the count [sic] was being closed." Dckt. 68, Exhibit B.

The Debtor argues that the bank account at Patelco Credit union was never closed and that there was sufficient funds in the bank to fund the payments for the months of May, June, and July 2015.

The Debtor asserts cause exists to vacate the dismissal because:

1. The Debtor did in fact attempt to make the payments, thought the payments were being made through the automated system provided by the trustee, and it is not the Debtor's fault that the payments did not go through as they had arranged.
2. Debtor have had and do have sufficient funds to pay the Trustee to date.
3. It would be a "gross miscarriage" to dismiss this case, when the fault was not that of the Debtor but of the automated system.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a response on August 25, 2015. Dckt. 74. The Trustee states that he does not oppose the Motion provided that the delinquent payments are made. The Trustee states it is unclear why Debtor's counsel did not appear at the Motion to Dismiss when both the Debtor and Debtor's counsel were served. Additionally, the Trustee state he is unsure when the Debtor made Debtor's counsel aware of the concerns the Debtor was encountering with the automated system.

SEPTEMBER 1, 2015 HEARING

Due to scheduling conflicts, the judge to whom this case is assigned continued the hearing to September 9, 2015. Dckt. 79. The court posted a tentative ruling for the September 1, 2015 hearing to afford counsel and Debtors the opportunity to consider the issues presented to the court. Furthermore, the court orders that no additional, supplemental, or other pleadings, evidence, or other documents be filed in connection with this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

DISCUSSION

The crux of the Debtor's argument is that the Debtor's did not know that the automated system was not deducting plan payments from their account for the months of May, June, and July, and therefore, the dismissal should be vacated.

As an initial policy matter, the finality of judgments is an important legal and social interest. The standard for determining whether a 60(b)(1) motion is filed within a reasonable time is a case-by-case analysis. The analysis considers "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Gravatt v. Paul Revere Life Ins. Co.*, 101 Fed.

Appx. 194, 196-197 (9th Cir. 2004); *Sallie Mae Servicing, LP v. Williams (In re Williams)*, 287 B.R. 787, 792 (B.A.P. 9th Cir. 2002).

However, the Debtor neglects to discuss other factual circumstances that are necessary in determining whether vacating the dismissal is proper. First, the Chapter 13 Trustee filed his Motion to Dismiss on June 3, 2015 on a Local Bankr. R. 9014-1(f)(2), which does not require written opposition. Dckt. 34. The Debtor and Debtor's counsel were served the Motion. Dckt. 37. The sole ground for the Motion to Dismiss was the Debtor's delinquency. As a Local Bankr. R. 9014-1(f)(2) motion, the Debtor and Debtor's counsel were permitted to appear at the June 24, 2015 hearing to oppose the Motion, arguing that the automated system did not properly withdraw the plan payments. However, the Debtor nor Debtor's counsel appeared at the hearing, as evidenced by the court's civil minutes on the Motion. Dckt. 51. The court, the day prior to the hearing, the court posted its pre-hearing tentative decisions, in which the Debtor and Debtor's counsel had the opportunity to review. Even in light of all the notice provided concerning the Motion to Dismiss, the Debtor did not respond nor did the Debtor or Debtor's counsel appear at the hearing.

The court has made it abundantly clear in the past that it is imperative for parties to respond to motions, especially motions to dismiss, either through written opposition if an Local Bankr. R. 9014-1(f)(1) motion or in person if an Local Bankr. R. 9014-1(f)(2) motion.

Second, the Motion to Vacate does not provide a single, legal ground to justify vacating the dismissal. The sole ground argued by the Debtor in the motion is that it would be a "gross miscarriage to dismiss this case." the Debtor does not provide a points and authorities cite Fed. R. Civ. P. 60(b) as the legal grounds nor presents any allegations that would fit into any of the subsections of Fed. R. Civ. P. 60(b). The Motion, on its face, does not comply with Fed. R. Bankr. P. 9013, requiring that the motion state with particularity the grounds for relief. The Debtor, instead, merely "passes the buck" to the automated system as being the culprit.

The proposed amended plan filed on June 3, 2014 (the same day the Motion to Dismiss was filed) provides for plan payments of \$2,865.00 for the first month then \$3,450.00 beginning June 2015 for 59 months. Dckt. 39. Prior to the dismissal, the May plan payment of \$2,865.00 came due which was the basis of the Trustee's Motion to Dismiss. While professing the non-payment not being Debtor's "fault," neither in the Motion nor Debtor's declaration is any explanation given for why and how Debtor did not notice that there was an "extra" \$3,000.00 in the bank accounts.

Third, Debtor does not state why two months after the dismissal, the Debtor is now just bringing the Motion to Dismiss. The court has no idea of what has transpired in the two months which have passed since the this bankruptcy case was dismissed. If a new case was filed, such transactions and other dealings would have to be disclosed. If the court were to merely vacate the dismissal after Debtor has operated outside the strictures of bankruptcy and the fiduciary duties to the estate of a Chapter 13 debtor, then there is no established procedure for such transactions and dealings to be disclosed.

Fourth, Debtor faces no shown prejudice by filing a new bankruptcy case. At the time of dismissal, only one plan payment had come due and only two months had passed since the filing of that bankruptcy case. Upon learning

of the dismissal by the end of June 2015 (the notice of dismissal having been served on June 26, 2015, Dckt. 26), Debtor could have immediately filed a new bankruptcy case and obtain a continuation of the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B). By the middle of July Debtor would be prosecuting the second bankruptcy case in good faith, safe in the knowledge that the automatic stay would continue in effect. But Debtor chose not to so act, waiting until August 10, 2015, to file the present Motion, which would not be heard until September 1, 2015.

On whole, this neglect is minimal justification at best, and minimized by the lack of opposition to the initial Motion to Dismiss which was within Movant's control to cure. *Sobhani v. United States*, 2015 U.S. Dist. LEXIS 68631, *7-8 (Cal. C.D., May 27, 2015) (citing *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1225 (9th Cir. 2000)). Thus, this factor weighs heavily against granting relief.

Though Debtor has chosen to delay, a new bankruptcy case may be filed with little, if any, prejudice to Debtor. Any delay has been caused by Debtor choosing not to respond to the motion to dismiss or take action to avoid a two month hiatus in this case. It is significant that no evidence of any temporary impairment for either Debtor or counsel, or both, which rendered an inability to respond to the motion to dismiss or take immediate action to have the dismissal vacated. This creates the appearance that the delay of two months is part of a preconceived strategy by Debtor. See *Sobhani*, 2015 U.S. Dist. LEXIS 68631, *6-7 (Cal. C.D. 2015) (citing *Bateman*, 231 F.3d 1220, 1225 (9th Cir. 2000)).

Even generously reviewing this Motion, a party may find relief under the "catch-all" provision of 60(b)(6), incorporated through Fed. R. Bankr. P. 9024, if there are "extraordinary circumstances. It should be applied "sparingly as an equitable remedy to prevent manifest injustice." *Stan Lee Media, Inc. v. Conan Sales Co. LLC*, 546 Fed. Appx. 725, 728 (9th Cir. 2013). It should be invoked where "extraordinary circumstances prevented a party from taking timely action to prevent or correct an erroneous judgment. *Crawford v. Franklin Credit Mgmt.*, 08 Civ. 6293 (JFK), 2013 U.S. Dist. LEXIS 84477, *6-7 (N.Y. S.D. 2013). Here, Movant's allegation that denial would be a "gross miscarriage" is not convincing as Debtor and Debtor's attorney failed to take the minimal effort and oppose the Motion to Dismiss at the June 3 hearing. Dckt. 51. Therefore, this court will not grant relief for faultless delay.

Therefore, as discussed supra, the Motion is denied.

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

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

The Motion to Vacate Dismissal of Case filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied.

3. [15-24500-E-13](#) RAMONA/ROBERT JONES
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-15 [[25](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Ramona and Robert Jones ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 7, 2015. The court computes that 64 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on July 2, 2015).

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

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

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

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

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

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

4. [15-24500-E-13](#) RAMONA/ROBERT JONES
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-5-15 [[32](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Ramona and Robert Jones ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 5, 2015. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on August 3, 2015).

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

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

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

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

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

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

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 August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 12, 2015. Dckt. 39. The Trustee objects on the grounds that: (1) Debtor failed to disclose the Debtor's prior bankruptcy case No. 12-32011; (2) Debtor has failed to provide the Trustee with a tax transcript or copy of the Federal Income Tax Return; and (3) Debtor has failed to file all pre-petition tax returns.

DEBTOR'S RESPONSE

The Debtor filed a response on August 25, 2015. Dckt. 48. The Debtor states that on or about August 13, 2015, all amendments the Trustee requested were filed and are attached to the Response. These include a list of all cases filed by Debtor and a copy of 2014 tax returns.

DISCUSSION

Unfortunately, the Debtor's response does not cure all the defects of the instant case.

The Debtor supplied a copy of their 2014 tax return and therefore, the Trustee's ground for dismissal for failure to provide the most recent pre-

petition tax year is denied. However, it appears that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the other pre-petition tax years required. See 11 U.S.C. § 1308. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the Debtor's "amendments" to the schedules is insufficient as they do not comply with the form required in the district.

The court has also reviewed the Amended Chapter 13 Plan filed in this case. Dckt. 43. No motion to confirm that plan has been filed. The basic terms of the plan provide for Debtor to make monthly plan payments of \$1,192.97 for a period of sixty months.

In Class 1, Debtor lists "Ocwen Loan Servicing" having a secured claim with a regular monthly post-petition payment of \$908.99. Debtor also lists a \$15,517.67 pre-petition arrearage owed on this claim to be paid through the Plan. The Plan does not specify any monthly payment amount for this arrearage. Over sixty months, repaying an arrearage of \$15,517.67 would require a monthly payment of \$258.63.

In the Amended Plan Debtor does not list any Class 2 (secured), Class 3 (surrender collateral), Class 4 (current, mature after completion of plan claims), Class 5 (priority unsecured, or Class 6 (designated unsecured claims) to be provided for in the Plan.

For Class 7, the dividend percentage and the general unsecured claim amount are left blank.

On Schedules E and F Debtor states that there are no priority or general unsecured claims. Dckt. 15. On the Statement of Financial Affairs Debtor states that no payments were made to creditors within the ninety days preceding the commencement of this bankruptcy case. *Id.*

On Schedule I Debtor states a monthly gross income of \$5,100.00 a month. *Id.* From this the only withholding is \$956 a month for taxes and Social Security withholding. Debtor lists an additional \$130 a month in disability income.

On Schedule J Debtor lists the monthly expenses for two adults. *Id.* These total \$1,003 a month (excluding the mortgage payment). These expenses are:

- A. Home Maintenance and Repair.....(\$100)
- B. Electricity, Gas.....(\$150)
- C. Water, Sewer, Garbage.....(\$109)
- D. Telephone, Cell, Cable.....(\$200)
- E. Food and Housekeeping Supplies.....(\$300)
- F. Clothing, Laundry.....(\$ 45)
- G. Personal Care Products and Services.....\$-0-
- H. Medial and Dental Expenses.....\$-0-
- I. Transportation.....(\$100)
- J. Entertainment.....(\$100)
- K. Life Insurance.....\$-0-
- L. Health Insurance.....\$-0-
- M. Vehicules Insurance.....\$-0-

Schedule B filed by Debtors list ownership of two vehicles, a 1997 Jeep and a 1999 Toyota. *Id.*

For the one claim provided for by the plan, the \$1,192.97 would be allocated as follows:

- A. Chapter 13 Trustee fee (assume 8%).....\$ 95
- B. Current Monthly Mortgage Payment.....\$909
- C. Arrearage Mortgage Payment.....\$259

Minium Required Payment.....\$1,264.

Assuming that Debtor states an accurate monthly net income to fund the plan, as proposed by Debtor the plan is under-funded by \$70 a month. However, Debtor's projection of expenses appears to be unreasonable and unsustainable. First, asserting that food and housekeeping supplies are only \$300 for two adults in one month is not facially credible. If Debtor managed to spend only \$50 a month on household supplies for the next sixty months, that leaves only \$125 a month, per person for food. This is just \$4.16 per day, or \$1.38 per meal.

Further, the court does not find it facially credible that Debtor, over sixty months, will have no medial or dental expenses (doctor or off the shelf medicine, Band-Aids, cough syrup, and the like), or any personal care products or supplies (if even just shampoo, deodorant, toothpaste, and hair cuts). Nothing from a review of the Schedules and Plan indicate that there is a viable case in process warranting that the court overlook the disclosure deficiencies.

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.

6. [11-32101-E-13](#) LEONARD/GAIL MAYBERRY
DPC-3 Scott Shumaker

MOTION TO DISMISS CASE
8-11-15 [[73](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 Motion to Dismiss is granted and the case is dismissed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,416.00 delinquent in plan payments, which represents multiple months of the \$697.00 plan payment.

Leonard and Gail Mayberry ("Debtor") filed a response on August 26, 2015. Dckt. 77. The Debtor states they will either file a modified plan or convert to a Chapter 7 prior to the hearing.

To date, no conversion or modified plan has been filed.

Failure to make plan payments is unreasonable delay which is prejudicial to creditors. In this case, the Debtor is delinquent \$3,416.00. This failure is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

7. [15-20001-E-13](#) JOSE/ESMERALDA GIL MOTION TO DISMISS CASE
DPC-1 Scott Hughes 8-11-15 [[37](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 denied without prejudice.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,288.00 delinquent in plan payments, which represents multiple months of the \$2,522.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

On September 9, 2015, Debtors filed their election to convert the case from one under Chapter 13 to a case under Chapter 7 of the Bankruptcy Code. Dckt. 80.

The case having been converted, the Motion is denied without prejudice.

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

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

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

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

8. 13-29102-E-13 EDMOND WHITNEY MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 8-3-15 [20]

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 August 3, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 3, 2015. Dckt. 20. The Trustee states that the Debtor is

\$10,000.00 delinquent.

The Debtor filed an opposition on August 25, 2015. Dckt. 25. The Debtor requests a 30 day continuance because there is a Substitution of Attorney pending and that additional time to analyze and determine if an amended plan is required.

The court notes that there is document titled "Substitution of Attorney for Debtor(s)" filed on August 6, 2015. Dckt. 24. The "substitution" has not been signed by the client. No order issued granting the substitution to date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$10,000.00 delinquent in plan payments, which represents multiple months of the \$2,500.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

More than a month has passed without an effective substitution of counsel having been filed. Debtor continues to be represented by counsel of record, who the court has not authorized to withdraw from the representation of this Debtor.

The court will not continue the Motion when the Debtor is delinquent four months in plan payments and when no substitution has been authorized, no opposition has been asserted by Debtor through counsel of record, or the delinquency having 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.

9. [14-31104-E-13](#) MICHAEL WALDO
DPC-1 Michael O'Dowd Hughes

MOTION TO DISMISS CASE
7-29-15 [[41](#)]

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 July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 July 29, 2015. Dckt. 41. The Trustee seeks dismissal because the Debtor is \$806.61 delinquent in plan payments.

The Debtor filed a response on August 26, 2015. Dckt. 45. The Debtor's counsel states that the Debtor has told counsel that the Debtor made a payment of \$350.00 on July 29, 2015. Further, Debtor's counsel states that the Debtor has told counsel that Debtor intends to send on additional payment of \$456.61 on August 24, 2015. The Debtor notes that an additional payment will be due on August 25, 2015 and he expects to pay that prior to the hearing.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$806.61 delinquent in plan payments, which represents multiple months of the \$492.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Debtor has not provided evidence that he is current on his plan payments, though he has made attempts to come current on the plan payments. Unfortunately, there appears to still be a delinquency.

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

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

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

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

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

11. [11-46706-E-13](#) VALERIE SMITH MOTION TO DISMISS CASE
DPC-2 Mary Ellen Terranella 7-29-15 [87]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal on September 3, 2015, Dckt. 94, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 94, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

12. [13-2980`7-E-13](#) CESAR/ELVIA VALLEJO
DPC-4 Steele Lanphier

MOTION TO DISMISS CASE
7-31-15 [[58](#)]

Final Ruling: No appearance at the September 9, 2015 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 July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor Elvia Vallejo is \$4,975.00 delinquent in plan payments, which represents multiple months of the \$1,375.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

13. [15-21707-E-13](#) JUDITH LAYUGAN MOTION TO DISMISS CASE
DPC-2 Richard Sturdevant 7-30-15 [[62](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

14. [11-49908-E-13](#) RUSSELL/JENNIFER MOTION TO DISMISS CASE
DPC-1 MCDERMOTT 8-11-15 [[56](#)]
Richard Chan

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

15. [15-23908-E-13](#) DANIEL/GAELYN REINA
DPC-1 Joseph Canning

MOTION TO DISMISS CASE
8-12-15 [[27](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,323.08 delinquent in plan payments, which represents multiple months of the \$661.54 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtors presented no opposition to the Motion.

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. *See* Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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. [10-54109](#)-E-13 GABRIEL/SUSANA MATA MOTION TO DISMISS CASE
DPC-1 Thomas O. Gillis 8-11-15 [[49](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

17. [14-20309-E-13](#) PATRICK/JENNIFER RESTORI MOTION TO DISMISS CASE
DPC-1 Brandon Johnston 7-31-15 [[26](#)]

Final Ruling: No appearance at the September 9, 2015 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 July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$20,000.00 delinquent in plan payments, which represents multiple months of the \$4,000.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

18. [13-24610](#)-E-13 DAX/TINA CHAVEZ
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
8-10-15 [[23](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

19. [15-23710-E-13](#) JENNIFER MUELLER
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-10-15 [[34](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jennifer Mueller ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 6, 2015. The court computes that 95 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 June 5, 2015).

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

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

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

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

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

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

20. [12-29412-E-13](#) MICHELLE FRAZIER
DPC-7 Candace Brooks

MOTION TO DISMISS CASE
8-11-15 [[70](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

21. [13-22012-E-13](#) KENNETH/KRISTINE THOMPSON MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 8-11-15 [[101](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.
Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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). The defaults of the non-responding parties and other parties in interest are entered.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 11, 2015. Dckt. 101. The Trustee seeks dismissal on the ground that the Debtor failed to provide the priority part of the claim of the Employment Development Department.

The Debtor filed an opposition to the instant Motion on August 26, 2015. Dckt. 105. The Debtor requests that the priority claim of Employment Development Department in the amount of \$621.81 be allowed as a Class 5 claim to be paid through the plan. Debtor's monthly plan payments are \$650.00 per month and the plan will complete within 60 months, with the addition of this nominal claim.

The Trustee argues that the Debtor is in material default of the plan under § 2.13 by failing to provide for the priority portion of the Employment Development Department in the amount of \$621.81. This is grounds for dismissal pursuant to 11 U.S.C. § 1307(a)(6).

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

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

Therefore, because the Debtor is in material default of the plan because failed to provide for the priority claim of Employment Development Department, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

22. [14-20512-E-13](#) VIRAB/EVA ABRAMYAN
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
8-11-15 [[85](#)]

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 August 11, 2015. 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 11, 2015. Dckt. 85. The Trustee seeks dismissal on the grounds that: (1) the plan will take 91 months to complete and (2) the Debtor is delinquent.

The Debtor filed an opposition on August 26, 2015. Dckt. 89. The Debtor states that they have cured the delinquency and will timely make the August 25th payment. Furthermore, the Debtor states that Debtor's counsel will be filing three objections to claims against Quantum3Group and Cavalry SPV on the basis the statute of limitations has allegedly run for these claims. The Debtor argues that, if successful on these objections, the plan would only take 60 months to complete. The Debtor requests that the Motion be denied or continued for 75 days to allow the objections to be filed.

A review of the docket shows that no such objections have been filed.

Even taking the assertion that the Debtor is current in plan payments, even though the Debtor did not provide any evidence that such payments were in fact made, there have been no objections to claim filed. Pursuant to § 5.03 of

the plan, if the plan will not complete in the permitted maximum 60 months as required by 11 U.S.C. § 1322(d), the Debtor is in material default. The plan appears, with all claims still valid, to exceed the maximum allowable time. This is cause pursuant to 11 U.S.C. § 1307(c)(6) to dismiss the case.

The court will not continue the Motion, at the prejudice of creditors and the estate, for the Debtor to possibly prosecute this case at some later date.

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.

23. [13-34713-E-13](#) DAVID/RAMONA TAGUE
DPC-1 W, Scott de Bie

MOTION TO DISMISS CASE
7-31-15 [[21](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

24. [13-34917-E-13](#) AARON CATUBIG MOTION TO DISMISS CASE
DPC-1 Scott Johnson 8-10-15 [[51](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

25. [14-20717-E-13](#) CANDICE SILVA MOTION TO DISMISS CASE
DPC-1 Mohammad Mokarram 7-30-15 [[39](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 11, 2015. Dckt. 107. The Trustee seeks dismissal on the ground that the Debtor is delinquent under the plan.

The Debtor filed an opposition on August 26, 2015 stating that the Debtor will be current prior to the hearing. Dckt. 111.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,350.00 delinquent in plan payments, which represents multiple months of the \$450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has provided no evidence that the delinquency has been cured.

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

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

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

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

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

27. [14-23319](#)-E-13 IRENE RENAUD MOTION TO DISMISS CASE
DPC-1 Richard Chan 7-30-15 [[19](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

28. [15-25720](#)-E-13 STEPHANIE BRECKENRIDGE ORDER TO SHOW CAUSE - FAILURE
Scott Johnson TO PAY FEES
7-31-15 [[21](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Stephanie Breckenridge ("Debtor"), Trustee, and other parties in interest on July 31, 2015. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on July 17, 2015).

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

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

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

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

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

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

29. [15-25321](#)-E-13 WENDEL GUGEL ORDER TO SHOW CAUSE - FAILURE
Jeremy Heebner TO PAY FEES
8-5-15 [[15](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Wendel Gugel ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 10, 2015. The court computes that 91 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 June 5, 2015).

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

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

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

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

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

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

30. [15-25722-E-13](#) JENNIFER JENSEN
Scott Johnson

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-31-15 [[17](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Jennifer Jensen ("Debtor"), Trustee, and other parties in interest on July 31, 2015. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on July 17, 2015).

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

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

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

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

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

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

31. [10-33226-E-13](#) ADOLFO RAMOS ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
7-15-15 [[41](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Adolfo Ramos ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 15, 2015. The court computes that 56 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 (\$25.00 due on July 1, 2015).

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

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

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

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

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

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

32. [10-44129-E-13](#) ALAN GILBERT MOTION TO DISMISS CASE
DPC-1 Brandon Scott Johnson 8-11-15 [[39](#)]

Final Ruling: No appearance at the September 9, 2015 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.**

33. [14-30130-E-13](#) MICHAEL/MARCIA CLARK
DPC-2 Justin Kuney

MOTION TO DISMISS CASE
8-10-15 [[52](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on August 10, 2015. 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 August 10, 2015. Dckt. 52

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,415.00 delinquent in plan payments, which represents multiple months of the \$805.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not responded to the instant Motion or provided evidence of the delinquency being 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.

34. [15-22730](#)-E-13 CHARLES/MARYLOU HODGE ORDER TO SHOW CAUSE - FAILURE
Scott Shumaker TO PAY FEES
8-6-15 [[79](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Charles and Marylou Hodge ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 6, 2015. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 3, 2015).

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

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

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

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

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

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

35. [15-22730-E-13](#) CHARLES/MARYLOU HODGE
Scott Shumaker

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-15 [[71](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Charles and Marylou Hodge ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 7, 2015. The court computes that 64 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 2, 2015).

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

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

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

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

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

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

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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 30, 2015. Dckt. 73. The Trustee seeks dismissal due to Debtor's delinquency and delay in confirming a plan.

The Debtor filed a response on August 26, 2015 stating that the Debtor intends to file a modified plan prior to the hearing date. Dckt. 82.

A review of the docket shows that no such plan nor motion to Confirm has been filed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$185.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 June 16, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

37. 15-23031-E-13 WILLIAM HAMILTON ORDER TO SHOW CAUSE - FAILURE
Marc Caraska TO PAY FEES
7-20-15 [43]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on William Hamilton ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 20, 2015. The court computes that 51 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$33.00 due on July 14, 2015).

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

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

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

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

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

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

in this court.

38. [15-23031](#)-E-13 WILLIAM HAMILTON
DPC-3

MOTION TO DISMISS CASE
7-30-15 [[45](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 31, 2015. Dckt. 67. The Trustee seeks dismissal on the ground that the Debtor is delinquent.

The Debtor filed an opposition on August 25, 2015. Dckt. 72. The Debtor requests a 30 day continuance because there is a Substitution of Attorney pending and that additional time to analyze and determine if an amended plan is required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,098.30 delinquent in plan payments, which represents multiple months of the \$323.53 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

More than a month has passed without an effective substitution of counsel having been filed. Debtor continues to be represented by counsel of record, who the court has not authorized to withdraw from the representation of this Debtor.

The court will not continue the Motion when the Debtor is delinquent three months in plan payments and when no substitution has been authorized, no

opposition has been asserted by Debtor through counsel of record, or the delinquency having 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.

40. [13-31632](#)-E-13 JANELLE GILMORE
DPC-3

MOTION TO DISMISS CASE
8-10-15 [[83](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 August 11, 2015. Dckt. 31. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed an opposition to the instant Motion on August 26, 2015. Dckt. 35. The Debtor states that he will be current by the hearing date. However, the Debtor does not provide any evidence that the delinquency has been cured.

Debtor explains his defaults by testifying that he chose to pay his mother's delinquent taxes rather than his necessary plan payments. While family assistance is admirable, in reality Debtor is merely taking money from his creditors to pay his mother's creditor (the county property taxes).

Debtor also states under penalty of perjury that "I am able to make extra payments into the plan..." Declaration, p.1:25.5; Dckt. 37. This appears to be an admission that Debtor has more than \$441 of projected disposable income a month with which to fund a Chapter 13 Plan. This would allow for something more than the 0.00% dividend provided for in the Plan for general unsecured claims of only \$5,250.00.

Debtor's current statement under penalty of perjury that he can make "extra payments" is inconsistent with the prior financial information provided under penalty of perjury on Schedules I and J. Dckt. 1 at 21-22. Debtor's prior statements under penalty of perjury were that he had no more than \$411.92 a month of monthly net income to fund a plan. *Id.*

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,764.00 delinquent in plan payments, which represents multiple months of the \$441.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

42. [12-23733-E-13](#) LINDA MIDGETT MOTION TO DISMISS CASE
DPC-6 Alan Honaker 8-11-15 [[77](#)]

Final Ruling: No appearance at the September 9, 2015 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.**

43. [11-28434-E-13](#) MICHAEL/WENDY SCOTT MOTION TO DISMISS CASE
DPC-3 Stephen Ruehmann 7-31-15 [[54](#)]

Final Ruling: No appearance at the September 9, 2015 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. [13-20034-E-13](#) MARIANNA BATTISTE MOTION TO DISMISS CASE
DPC-6 Peter Macaluso 8-10-15 [[46](#)]

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 August 10, 2015. 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 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 August 10, 2015. Dckt. 46. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed an opposition on August 25, 2015 stating that the Debtor will be current on or before the hearing. Dckt. 50.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,600.00 delinquent in plan payments, which represents multiple months of the \$1,800.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Debtor has failed to provide evidence that the delinquency has been cured. Further, Debtor offers no explanation as to how there can be an "extra" \$3,600.00 in any given month to cure the delinquent payments, on top of the \$1,800.00 of projected monthly disposable income to fund the current monthly 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.

45. [14-22134-E-13](#) CHERYLE MCNEAL
DPC-2 W. Steven Shumway

MOTION TO DISMISS CASE
8-11-15 [[77](#)]

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 August 11, 2015. 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 August 11, 2015. Dckt. 77.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,578.00 delinquent in plan payments, which represents multiple months of the \$1,310.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Debtor has failed to respond to the instant Motion.

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

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

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

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

and good cause appearing,

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

46. [15-25634-E-13](#) **SERGEY YANOVSKIY**
Pro se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-19-15 [[22](#)]**

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Sergey Yanovskiy ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 21, 2015. The court computes that 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on August 14, 2015).

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

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

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

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

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

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

47. [11-28735-E-13](#) CLIFTON/MICHELLE KING
DPC-2 Scott Coben

MOTION TO DISMISS CASE
8-11-15 [[27](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

48. [14-24035-E-13](#) KAREN HOWARD
DPC-1 Mark Shmorgan

MOTION TO DISMISS CASE
8-11-15 [[28](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 August 11, 2015. Dckt. 28. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed a response to the instant Motion on August 11, 2015 stating that she will be current by the time of the hearing. Dckt. 32.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$430.00 delinquent in plan payments, which represents multiple months of the \$215.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Debtor has failed to provide any 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.

49. [15-20335-E-13](#) **MARK/GINALYN CHANG** **MOTION TO DISMISS CASE**
DPC-1 **Matthew Eason** **8-10-15 [19]**

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

50. [12-38436-E-13](#) NARAINAN/UMA NAIR
DPC-1 Scott Johnson

MOTION TO DISMISS CASE
8-11-15 [[111](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

51. [15-20336-E-13](#) ANTWANETTE RAYMOND
DPC-2 David Foyil

MOTION TO DISMISS CASE
8-12-15 [[90](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

52. [15-23238-E-13](#) KATRINA NOPEL
DPC-2 Peter Cianchetta

MOTION TO DISMISS CASE
8-12-15 [[34](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 August 12, 2015. Dckt. 34.

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. *See* Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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

53. [11-33540-E-13](#) GREGORY/ROBIN SMITH MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 7-29-15 [[142](#)]

The Chapter 13 Trustee having filed a Notice of Withdrawal on September 4, 2015, Dckt. 149, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 149, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The court's decision is to conditionally grant the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 31, 2015. Dckt. 56. The Trustee seeks dismissal on the ground that the Debtor is \$1,320.00 delinquent in plan payments.

The Debtor filed a response to the instant Motion on August 3, 2015. Dckt. 60. The Debtor states that the Debtor actually completed the plan payments on January 28, 2015. The Debtor argues that under the confirmed plan the Debtor was to pay a total of \$91,066.92 into the confirmed plan, which the Debtor did as of the January 28th payment.

On August 31, 2015, the parties filed a stipulation to conditionally deny the Trustee's Motion. The Stipulation states that the only remaining debt is to be paid is the creditor secured by the car.

The Stipulation states that the Debtor is aware of the car issue and acknowledges the default in plan payments. The creditor JPMorgan Chase Bank, N.A. is owed \$601.11 principal plus \$15.00 interest on the 2005 GMC Canyon. The total payoff plan is approximately \$670.00 to be paid by September 25, 2015. The parties stipulate that the order denying the instant Motion shall be conditioned on the Trustee receiving the final payment of \$670.00 by September 25, 2015. If the payment is not received in accordance with the Stipulation,

the Trustee can request the case be dismissed by declaration.

The court grants the motion, conditionally dismissing the case as provided in the Stipulation.

Counsel for the Chapter 13 Trustee shall prepare and lodge with the court a order conditionally granting the motion.

55. [14-25740-E-13](#) MARIO RILEY MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 7-29-15 [[43](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 August 11, 2015. Dckt. 30. The Trustee seeks dismissal on the ground that the Debtor is delinquent.

The Debtor filed an opposition to the instant Motion on August 24, 2015. Dckt. 34. The Debtor states that he plans on filing a modified plan.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,300.00 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).

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.

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 August 10, 2015. 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 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 August 10, 2015. Dckt. 26. The Trustee seeks dismissal on the ground that the Debtor is delinquent.

The Debtor filed a response to the instant Motion on August 11, 2015. The Debtor states that she plans to be current at the time of the hearing.

To date, the Debtor has not provided any evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,275.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

59. [10-38042-E-13](#) STEVEN SECCO MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 7-29-15 [[46](#)]

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 July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 July 29, 2015. Dckt. 46. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed an opposition to the instant Motion on August 25, 2015. Dckt. 50. The Debtor states that he believed that his tax refund was

going to be applied to his Chapter 13 directly. Debtor states he requires additional time to remit the final payment and resolve the missing refund. The Debtor requests the Motion either be denied or continued.

In contending that Debtor had some good faith belief that a tax refund would be "applied to his Chapter 13 directly," the Debtor fails (or refuses) to provide any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by Debtor's counsel

To date, no evidence has been provided that the Debtor has cured the delinquency. While Debtor's counsel argues that there is only a balance of \$466.00 which remain to be paid under the plan to complete it, nothing has been paid. Under the Modified Plan Debtor is obligated to make monthly plan payments of only \$155.00. Debtor defaulted with the July 2015 payment. No testimony, or even argument by counsel, is provided as to why the Debtor has defaulted in the payment and why the default is continuing rather than having \$155.00 paid in August, another \$155.00 paid in September, and most of the shortfall wiped out. Instead, Debtor's counsel argues that Debtor should be given another sixty days to delay payment.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$471.00 delinquent in plan payments, which represents multiple months of the \$155.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 30, 2015. Dckt. 38. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed an opposition to the instant Motion on August 25, 2015. Dckt. 42. The Debtor states that she will be current on or before the hearing.

To date, no evidence has been presented that the Debtor has cured the delinquency. In contending that Debtor would be "current" by the time of the hearing, the Debtor fails (or refuses) to provide any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,000.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Failure to make plan payments is unreasonable delay

which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

61. [12-20844](#)-E-13 AARON/JENNIFER PRUITT MOTION TO DISMISS CASE
DPC-4 Mark Wolff 7-31-15 [[52](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed the instant Motion to Dismiss on July 31, 2015. Dckt. 52. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payment.

Debtor filed an opposition on August 26, 2015. Dckt. 56. The Debtor states that the Debtor plans to be current on or before the hearing.

To date, no evidence has been provided by the Debtor that the delinquency has been cured. A promise to pay delinquent payments is not sufficient evidence to rebut a showing of delinquent payments. In contending that Debtor would be "current" by the time of the hearing, the Debtor fails (or refuses) to provide any testimony under penalty of perjury to such contention. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,310.00 delinquent in plan payments, which represents multiple months of the \$3,380.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

62. [12-29244-E-13](#) CARMELITA SORIA
DPC-3 Jared Gaynor

MOTION TO DISMISS CASE
7-30-15 [[31](#)]

Final Ruling: No appearance at the September 9, 2015 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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 30, 2015. Dckt. 31. Debtor did not file an opposition.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,850.00 delinquent in plan payments, which represents multiple months of the \$950.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case because of the delinquent payments. 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. [14-27045-E-13](#) HARINDER SINGH
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
8-24-15 [[97](#)]

Tentative Ruling: The Motion to Vacate Dismissal of Case 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 August 24, 2015. 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.

The court's decision is to continue the hearing on the the Motion to Dismiss to 10:00 a.m. on October 14, 2015.

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 24, 2015. Dckt. 31.

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 three separate objections: Trustee's Objection to Confirmation (Dckt. 64); Objection to Confirmation of Plan by Sacramento Sikh Society Bradshaw Temple (Dckt. 65); and Objection to Confirmation of Plan by Bank of America, N.A. (Dckt. 66). A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

However, the court notes that Debtor is enmeshed in an adversary proceeding. Adv. Proc. No. 14-2237. That adversary proceedings has been pending since August 13, 2014. The parties report that the dispute in the adversary proceedings appears to have been settled. Plaintiff's Pretrial Conference Statement and Status Report. 14-2237, Dckt. 35. The court continued the pre-trial conference to allow the parties to document the settlement.

On September 2, 2015, Debtor filed a Defendant's Pre-Trial Status Report. Dckt. 38. Debtor states that a settlement agreement has been signed. No mention is made of what is to happen in the adversary proceeding.

While the court gives the benefit of the doubt to the Debtor and Plaintiff in the adversary proceeding, the Debtor's failure to respond to the Trustee's current motion may be a strategic default to have the bankruptcy case dismissed. Then, with the bankruptcy case dismissed, Debtor would then attempt to contend that any purported settlement in connection with the adversary proceeding was void. FN.1.

FN.1. The court notes that Debtor has filed a motion to approve a compromise, which has not been set for hearing until September 22, 2015. The court would have expected Debtor to respond to the present motion and notify the court that the hearing should be continued until after the settlement is approved.

A cursory review of the proposed settlement shows that it requires Debtor to make a \$60,000 payment. Motion, Dckt. 90. The Settlement Agreement, dated June 22, 2015, requires the Debtor to make a \$30,000 payment by July 2, 2015, and a second \$30,000 payment by December 25, 2015. Exhibit A, Dckt. 93.

No declaration is filed in support of the motion to approve compromise.

Since the settlement has not been approved, it appears that Debtor is already in default, being unable to make the July 2015 payment. The court will not presume that the Debtor, as a fiduciary of the bankruptcy estate, has diverted property of the estate without proper authorization.

To avoid any possible misunderstanding if the bankruptcy case was dismissed, the court continues the hearing on the Motion to Dismiss to allow Debtor and Plaintiff to properly dispose of the adversary proceeding (whether dismissal, stipulated judgment, or other appropriate resolution) before the bankruptcy case is dismissed. Further continuance may be necessary as Debtor may have to supplement the record for the motion to approve compromise to disclose the source of \$60,000.00 of payments to be made in 2015 to complete the settlement.

The motion is continued to 10:00 a.m. on October 14, 2015.

The court shall issue a minute 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 October 14, 2015.

64. [11-25546](#)-E-13 CESAR/PACITA RAVENA MOTION TO DISMISS CASE
DPC-5 Richard Chan 7-31-15 [[84](#)]

Final Ruling: No appearance at the September 9, 2015 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.**

65. [12-27946-E-13](#) CHUCK/WENDY STIEDE
DPC-6 Scott J. Sagaria

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

Final Ruling: No appearance at the September 9, 2015 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 July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 31, 2015. Dckt. 129. Debtor has not filed opposition.

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

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

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

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

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

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

66. [10-50148-E-13](#) LAURA HALL
DPC-10 Robert Hale McConnell

MOTION TO DISMISS CASE
8-11-15 [[72](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 11, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015. Dckt. 72. Debtor has not filed opposition.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,578.00 delinquent in plan payments, which represents multiple months of the \$457.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

67. [11-30248-E-13](#) ARNEL RIMANDO MOTION TO DISMISS CASE
DPC-3 Kristy Hernandez 7-29-15 [[67](#)]

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 July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee, filed this Motion to Dismiss on July 29, 2015. Dckt. 72.

Debtor filed a Declaration on August 26, 2015. Dckt. 71. The Debtor states that she will be current on or before the hearing.

To date no evidence has been provided that the Debtor has cured the delinquency.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$207.76 delinquent in plan payments, which represents one month of the \$207.76 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay delinquent payments is not sufficient evidence to

rebut the Trustee's showing of delinquency. 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.

68.	15-23948 -E-13	DENISE BARRITT Mohannad Mokarram	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-20-15 [18]
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Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Denise Barritt ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 20, 2015. The court computes that 51 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 13, 2015).

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

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

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

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

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

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

69. [15-23948-E-13](#) DENISE BARRITT MOTION TO DISMISS CASE
DPC-1 Mohammad Mokarram 8-12-15 [[22](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 12, 2014. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 12, 2015. Dckt. 22. Debtor has not filed opposition.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$550.00 delinquent in plan payments, which represents multiple months of the \$525.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

70. [09-43949-E-13](#) ANTHONY KELLY MOTION TO DISMISS CASE
DPC-8 Nikki Farris 8-11-15 [[111](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

71. [11-30149](#)-E-13 ANNA MEDINA AND MARCOS MOTION TO DISMISS CASE
DPC-2 MATA 8-11-15 [[59](#)]
Harry Roth

Final Ruling: No appearance at the September 9, 2015 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.**

72. [13-29251](#)-E-13 DAMION BOATMAN MOTION TO DISMISS CASE
DPC-2 Scott Shumaker 8-10-15 [[104](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 10, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 10, 2015. Dckt. 104. Debtor did not file an opposition.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,033.00 delinquent in plan payments, which represents multiple months of the \$1,279.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because Debtor is delinquent, 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.

73.	10-41154-E-13	J.C./JUDY SKINNER	MOTION TO DISMISS CASE
	DPC-1	Mark Briden	7-29-15 [81]

Final Ruling: No appearance at the September 9, 2015 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.**

74. [13-35754-E-13](#) MATTHEW/ARIANA VICKERS MOTION TO DISMISS CASE
DPC-3 W. Steven Shumway 7-31-15 [[79](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

75. [15-24654-E-13](#) JOSEF/AMY DUNHAM
DPC-2 Dale Orthner

MOTION TO DISMISS CASE
8-12-15 [[23](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 12, 2015. Dckt. 26.

The Trustee argues that the Debtor did not commence making plan payments and is \$463.03.00 delinquent in plan payments, which represents one month of the \$463.03.00 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.

Because Debtor has failed 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.

76. [10-51955-E-13](#) ALESIA THOMAS MOTION TO DISMISS CASE
DPC-3 Peter Macaluso 7-31-15 [[82](#)]

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 July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 31, 2015. Dckt. 82.

Debtor filed an opposition August 25, 2015. Dckt. 87. The Debtor requests a 30 day continuance because there is a Substitution of Attorney pending and that additional time to analyze and determine if an amended plan is required. The attorney who filed the opposition is Peter Macaluso, who is not the attorney of record.

The court notes that there is a "Substitution of Attorney for Debtor" filed on August 9, 2015. Dckt. 86. However, there has been no order issued granting the substitution to date and the Debtor did not accept the substitution.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,470.72 delinquent in plan payments, which represents multiple months of

the \$2,664.02 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

More than a month has passed without an effective substitution of counsel having been filed. Debtor continues to be represented by counsel of record, who the court has not authorized to withdraw from the representation of this Debtor.

Without evidence presented to cure the delinquency, this court finds cause 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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 30, 2015. Dckt. 94. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

The Debtor filed a reply to the instant Motion on August 25, 2015. Dckt. 98. The Debtor states that the delinquency will be cured and an amended plan and Motion to Confirm will be filed and served prior to hearing.

To date, no evidence has been presented that the delinquency has been cured. Additionally, there are no pending plans or Motions to Confirm currently filed. FN.1.

FN.1. While Debtors have provided a declaration in opposition to the motion, their testimony under penalty of perjury consists of stating "We have reviewed the reply to this Motion [to dismiss], as prepared by our attorney. We further agree and concur with the facts as presented therein." Dckt. 99. The court reads such "testimony" as merely being a statement, "yeah, whatever is said by our attorney is some other pleading is something that we concur with - because

it's to our advantage." Interestingly, the "response" by counsel appears to be a generic "check the box" response form, which bears little relationship to the actual circumstances of this specific bankruptcy case.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,237.60 delinquent in plan payments, which represents multiple months of the \$3,115.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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 August 10, 2015. 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 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 10. Dckt. 47. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 26, 2015. Dckt. 51. Debtor objects on two grounds. The first to address is a service challenge. The second is an argument on Debtor's ability to pay the plan payments.

On the service challenge, Debtor alleges that counsel was not properly served at his updated address. Dckt. 51, ¶ 8.

On the delinquency opposition, Debtor declares under penalty of perjury that a miscommunication between Debtor's counsel and Trustee's office in March 2015 created a 2-month delay, where the wage order was not processed until May 26, 2015. Dckt. 52, ¶ 4, 5. Debtor alleges that the delinquency is "larger than he is able to cure before the dismissal hearing." Dckt. 52, ¶ 7. Debtor acknowledges that:

In retrospect, I realize I should have paid more attention to

my financial affairs. The problem is that I don't manage money well, which is the reason I wanted the wage order in place because I know the money is being paid each month.

Dckt. 51, ¶ 6. To help himself personally, Debtor promises to complete the required Financial management Course before the dismissal hearing, rather than waiting until later. Dckt. 51.

TRUSTEE'S REPLY

The Trustee filed a reply to Debtor's response on September 2, 2015. Dckt. 55. The Trustee states that the Debtor remains delinquent under the plan and that no new plan has been filed. The Trustee further states that, as to the wage order, the order was entered May 26, 2015 and the first employer deduction was August 21, 2015. The Trustee states that when the Debtor was using the TFS, the Debtor was almost current until the Debtor changed to wage order.

The Trustee, as to the Debtor's attorney objection over improper service, states that he was not served it until July 30, 2015 by fax. The Trustee argues that the Debtor's counsel was advised the Motion was going to be filed and that the Debtor's counsel timely filed a response.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor has paid a total of \$4,599.00 of the total \$8,196.00 due. Thus, Debtor is \$3,597.00 delinquent in plan payments, which represents multiple months of the \$982.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In the opposition, Debtor acknowledges that he cannot cure the current default and must file a modified plan and motion to confirm. Opposition, p. 3:4-7, Dckt. 51. However, the court's review of the Docket shows that no modified plan has been filed. The delinquencies date back to December 2014, with the Debtor not taking any action to modify the plan.

While the parties can expend time and resources arguing over where the motion was sent, Debtor and counsel have timely responded. There are not factual disputes at issue. Everyone recognizes that the Debtor must file a modified plan and seek to confirm such a plan. The Debtor has not sought to modify the plan.

Delinquency is cause for dismissal, and Debtor has not presented evidence to demonstrate the delinquency has been cured. Debtor has not provided the court with a proposed modified plan or motion to confirm. Thus, 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.

79. [15-22155](#)-E-13 LORNA ELVE AND JOSEPH ORDER TO SHOW CAUSE - FAILURE
LAMBERT TO PAY FEES
Pro Se 8-4-15 [[62](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Lorna Elve and Joseph Lambert ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 4, 2015. The court computes that 51 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on July 21, 2015).

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

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

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

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

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

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

80. [15-22155-E-13](#) LORNA ELVE AND JOSEPH CONTINUED MOTION TO DISMISS
DPC-1 LAMBERT CASE
Pro Se 6-4-15 [[43](#)]

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 (*pro se*), Debtor's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 20 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 court's decision is to grant the Motion to Dismiss and the case is dismissed.

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 4, 2015. Dckt. 43. The Trustee argues that the Debtor did not commence making plan payments and is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the First Meeting of Creditors, nor the continued Meeting, held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the

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

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee additionally alleges that the Debtor has failed to provide the Trustee with a Domestic Support Obligation Checklist.

Lastly, the Trustee asserts that the Debtor cannot afford the Plan payments. Schedule J reflects a negative monthly net income of \$793.00, yet the Debtor proposes making a \$100.00 per month Plan payment. See Dckt. 40.

JUNE 24, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on September 9, 2015.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on August 26, 2015. Dckt. 67. The Trustee states that the Debtor is now current under the plan. However, the Trustee states that Debtor Joseph Lambert failed to appear at any of the four Meeting of Creditors scheduled and that the Debtor has failed to file a Motion to Confirm the plan that was filed on April 29, 2015.

DISCUSSION

The Debtor has not filed any supplemental papers in response to the instant Motion.

Therefore, because the Debtor still have not served the Plan on all interested parties and has yet to file a motion to confirm the Plan, provide the Trustee with a Domestic Support Obligation Checklist, Debtor Joseph Lambert failed to attend any of the Meeting of Creditors, and Debtor's inability to afford the 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.

81. [15-22957](#)-E-13 ROBERT BOUGHTON
Thomas Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-17-15 [[43](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Robert Boughton ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 17, 2015. The court computes that 23 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$73.00 due on August 11, 2015).

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

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

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

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

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

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

82. [15-25257](#)-E-13 MEGAN CARR
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-4-15 [[16](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Megan Carr ("Debtor"), Trustee, and other parties in interest on August 4, 2015. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 30, 2015).

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

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

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

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

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

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

83. [14-20159-E-13](#) ROSIE MOORE
DPC-1

MOTION TO DISMISS CASE
8-11-15 [[67](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 11, 2015. 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 August 11, 2015. Dckt. 62. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payment.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 28, 2015. Dckt. 66. The Debtor states that she made a payment of \$1,100.00 to the Trustee on August 11, 2015. However, the Debtor admits that another payment of \$550.00 has come due. The Debtor says that she will make the payment on September 3, 2015, when she receives her Social Security check. FN.1.

FN.1. Debtor's counsel cites to two Rules: Fed. R. Civ. P. 43(e) and Fed R. Bankr. P. 9017 with respect to the presentation of evidence. It appears that there is a typographical error in this reference as there is not a Rule 43(e), but Rule 43(c) is cross referenced in Local Bankruptcy Rule 9014-1(g).

DISCUSSION

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

The Debtor has failed to provide evidence that the current delinquency of \$550.00 has been cured.

Significantly, Debtor offers no explanation as she could have \$1,100 of monies available in August 2015, and then \$1,100 in September 2015 to pay both the August plan payment and the September plan payment. Taking the information provided under penalty of perjury on Schedule I, Dckt. 1, and Amended Schedule J, Dckt. 27, this should be a financial impossibility.

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

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

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

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

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

85. [15-25460-E-13](#) DENNIS JACOPETTI
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-13-15 [[39](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Dennis Jacopetti ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on August 13, 2015. 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 (\$79.00 due on August 10, 2015).

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

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

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

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

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

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

Tentative Ruling: The Motion to Dismiss 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 August 26, 2015. 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 August 26, 2015. Dckt. 49.

First, the Trustee argues that the Debtor is causing unreasonable delay that is prejudicial to creditors because this is the Debtor's fifth bankruptcy case within the last three years. The Trustee asserts that the Debtor has not demonstrated any change in circumstances in the present case. The following chart shows the previously filed cases.

Case No.	Date Filed	Date Dismissed	Reason
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12-26206-13	March 20, 2012	April 10, 2012	Failure to timely file documents
13-34492-7	November 13, 2013	January 14, 2014	Failure to appear at the first meeting of creditors
14-23007-11	March 25, 2014	April 14, 2014	Failure to timely file documents
14-27264-13	July 15, 2014	April 7, 2015	Delinquency and failure to file an amended plan or motion to confirm following a previous denial

In light of the Debtor's repeated failure to prosecute a bankruptcy case competently and completely, the fact this is the Debtor's fifth bankruptcy case with multiple deficiencies causes unreasonable delay that is prejudicial to creditors. This is a ground to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

Moreover, the Trustee argues, based on the Proof of Claim No. 4 filed by the Internal Revenue Service, that the federal income tax return for the 2008, 2009, 2010, 2011, 2012, and 2013 tax years still have not been filed. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

The Trustee also alleges that the Debtor has failed to provide business documents and business attachment to Schedule I. The Trustee emphasizes that this was a grounds for the dismissal in the Debtor's previous case no. 14-27264-13 and that the Debtor is aware of the need to file these documents. This failure further causes unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, the Trustee argues that the Debtor did not commence making plan payments and is \$200.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Debtor has failed to respond to the instant Motion. This further emphasizes and highlights that the Debtor appears to be filing these repeated bankruptcies without the intent to prosecute the case. This is not only highly prejudicial to the Debtor's creditors but also a waste of judicial resources and economy.

With respect to these multiple filings, in dismissing the prior case the court noted that the dismissal did not deprive the court of jurisdiction to address contentions by the U.S. Trustee, Chapter 13 Trustee, or creditors that a bar on Debtor commencing another case. 14-27264; Civil Minutes, Dckt. 108. No such relief was sought in connection with the prior case.

Debtor has been represented by the same attorney in the present bankruptcy case and Chapter 13 case 14-27264; and in pro se in the three earlier cases since 2012. None have been prosecuted by Debtor.

In this case, the Debtor's Chapter 13 Plan provides for minimal \$200 a month payments, when Debtor is unable to make in a timely manner. Plan, Dckt. 13. Debtor is able to generate this minimal payment, notwithstanding having gross business income of \$250,000+ a year. Statement of Financial Affairs, Question 1; Dckt. 30. Debtor states on Schedule I that his net monthly income is \$5,500.00. Dckt. 31. Though required to be attached to Schedule I, Debtor fails to provide a statement of the gross business income and expenses upon which he asserts having \$5,500.00 in net income monthly from his business..

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

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

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

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

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

87. [14-29661](#)-E-13 AARON/HEATHER BRYANT
DPC-1 James Keenan

MOTION TO DISMISS CASE
8-11-15 [[26](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

88. [14-21662-E-13](#) ANN-MARIE SCOTT
DPC-2 Richard Sturdevant

MOTION TO DISMISS CASE
7-29-15 [[66](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion on July 29, 2015. Dckt. 66. The Trustee seeks dismissal of the case on the basis that the Debtor is \$12,190.71 delinquent in plan payments, which represents multiple months of the \$4,063.57 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor offers no opposition to this case.

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

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

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

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

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

89. [15-23662](#)-E-13 JUAN FLORES
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-8-15 [[59](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Juan Flores ("Debtor"), Trustee, and other parties in interest on July 8, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 6, 2015).

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

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

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

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

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

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

90. [15-23662-E-13](#) JUAN FLORES
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-7-15 [[70](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Juan Flores ("Debtor"), Trustee, and other parties in interest on August 7, 2015. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 3, 2015).

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

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

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

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

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

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

91. [15-23662-E-13](#) JUAN FLORES
DPC-2 Marc Caraska

MOTION TO DISMISS CASE
7-30-15 [[66](#)]

Final Ruling: No appearance at the September 9, 2015 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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 30, 2015. Dckt. 66.

The Trustee argues that the Debtor did not commence making plan payments and is \$264.00 delinquent in plan payments, which represents multiple months of the \$132.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The 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 July 21, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor presented no opposition to the Motion.

Both of Trustee's arguments are separate grounds for dismissal, so cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

92. [15-21163](#)-E-13 GIANNE/RUBY-ROSE APURADO MOTION TO DISMISS CASE
DPC-1 Julius Engel 8-12-15 [[36](#)]

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 August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 12, 2015. Dckt. 39. The Trustee seeks dismissal on the ground that the Debtor has failed to file an amended plan.

DEBTOR'S OPPOSITION

Debtor filed opposition on August 26, 2015. Dckt. 42. Debtor asserts:

[T]hey are in the process of filing said required plan and its attendant motion for confirmation. The plan has not yet been filed because of inadvertent and excusable neglect. The plan was sent to the debtors via email by counsel. The debtors receive [sic] it and thought they had returned it but did not. Hat [sic] matter is being rectified now...

Dckt. 42, 43. FN.1.

FN.1. This court notes that no legal authority is cited in Debtor's opposition beyond a passing mention that "[e]quity cries out for this relief." This violates Local Bankr. R. 9014-1(d)(6), which requires "[e]ach motion, opposition, and reply shall cite the legal authority relied upon by the filing party."

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on September 1, 2015. Dckt. 51. Trustee's Status Report raises new issues for the court. First, Debtor has improperly filed an Amended Plan attached as an exhibit to the Motion to Confirm First Modified Plan. Dckt. 45, p. 5 *et seq*; LBR 3015-1(d)(1). Second, Debtor's Motion to Confirm was filed August 27, 2015, which is less than the 42 days required by LBR 3015-1(d)(1). Dckt. 45. Finally, Trustee re-affirms that Debtor failed to correct the delinquency.

DISCUSSION

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 June 4, 2015. Dckt. 35. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan but facially failed to give the necessary notice as required by Local Bankr. R. 3015-1(d)(1). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Additionally, the Trustee seeks dismissal of the case on the basis that the Debtor is \$2,745.08.00 delinquent in plan payments under the amended plan, which represents multiple a portion of the \$3,529.18 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In reviewing the motion and supporting pleadings to confirm the modified plan the court notes the following. First, in their declaration, Debtor testifies to very little. Most of their "testimony" consists of telling the court that they are not attorneys and "We have relied upon our attorney to" Dckt. 47. Debtor provides the court with little testimony of events and facts for the court. Rather, they testify that "certain legal and/or financial events have occurred that require the modification of our Plan." *Id.* The "events" include a realization that Debtor's desire to keep their timeshare was impractical. *Id.*

There is no confirmed plan in this case and there is nothing to modify. It appears that this realization has occurred since the case was filed earlier this year.

On Amended Schedule J Debtor now lists monthly expenses of \$3,806 (not including a mortgage or rent expense). Dckt. 49. This is for a family of two adults and three minor children. The expenses do not appear to be facially unrealistic. On the original Schedule J filed in this case listed expenses of \$3,686. Dckt. 9. The Amended Plan appears to merely move the timeshare plan payment back into the Debtor's budget for other expenses, Debtor now electing to surrender the timeshare.

While this appears to be a simple change, it is being done incorrectly. No amended plan has been filed. Rather, it is improperly hidden behind the motion. The motion, declaration, plan, each declaration, and exhibits are filed as separate documents. L.B.R. 9004-1 and Revised Guidelines for Preparation of Documents. As of the court's review, no amended plan had been filed as of the eve of the hearing on this motion to dismiss.

Second, Debtor shows a lack of knowledge concerning facts in this case, instead merely stating conclusions based on relying on whatever Debtor's attorney has said in other documents or outside of court.

As Debtor failed to file sufficient evidence to rebut Trustee's showing of unreasonable delay, 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.

93. [10-40964-E-13](#) EDDIE/MELISSA BERENGUE MOTION TO DISMISS CASE
DPC-5 Richard Chan 8-10-15 [[188](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

94. [13-32964-E-13](#) LAURIE/JOSEPH MADDEN
NLE-1 Michael O'Down Hays

MOTION TO DISMISS CASE
8-11-15 [[50](#)]

Final Ruling: No appearance at the September 9, 2015 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 August 11, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015. Dckt. 50. Debtor did not file an opposition.

Trustee asserts that Debtor has only paid \$6,210.00 of the total \$7,245.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$1,035.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee further notes that the court denied the Debtor's Motion for Substitution of for Representative and Continued Administration of the Case and waiver of Certification Requirements for Discharge. The Trustee asserts the failure of the Debtor to re-set the matter means that it does not appear the case should proceed.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

95. [13-34164-E-13](#) ANGELINA ROBINSON MOTION TO DISMISS CASE
DPC-4 Mark Alonso 8-11-15 [[121](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee, filed this Motion to Dismiss on July 29, 2015. Dckt. 58.

Debtor filed an opposition on August 25, 2015. Dckt. 63. Debtor asserts that "Debtor will be current on or before the hearing in this matter." Dckt. 63. Debtor provides no evidence that the delinquency has been cured.

The Trustee asserts that Debtor has only paid \$20,450.00 of the total \$30,250.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$9,800.00 delinquent in plan payments, which represents multiple months of the \$2,450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay is not sufficient to cure delinquency. Therefore, cause exists to dismiss this case for delinquent payments.

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.

97. [14-26567-E-13](#) SAMUEL TAPIA
DPC-3 John Downing

MOTION TO DISMISS CASE
7-29-15 [[60](#)]

Final Ruling: No appearance at the September 9, 2015 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.

98. [14-32167](#)-E-13 SHELDON MCRAY
DPC-2

MOTION TO DISMISS CASE
8-11-15 [[54](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

Tentative Ruling: The Motion to Dismiss 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 August 26, 2015. 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, as Chapter 13 Trustee, brought this Motion to Dismiss against Richard Arthur Comer ("Debtor") on August 26, 2015. Dckt. 27. Debtor did not file an opposition.

The Trustee argues that the Debtor did not commence making plan payments and is \$11,854.00 delinquent in plan payments, which represents multiple months of the \$5,927.00 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).

Both grounds are sufficient cause 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 August 11, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015 for failure to meet § 5.03 of the Plan. Dckt. 27.

Debtor filed an opposition on August 26, 2015. Dckt. 32. The Debtor claims "she will file, set, serve and be current under an Amended Plan on or before the hearing in this matter." Dckt. 32. On these grounds, Debtor requests the motion be denied.

A review of the docket shows that no Amended Plan has been filed.

Even taking the assertion that Debtor will file, set, serve, and correct delinquencies from the original plan under the amended plan, Debtor did not file any evidence that shows these actions have been completed to correct the deficiency. Pursuant to § 5.03 of the Plan, if the plan will not be complete in the permitted maximum 60 months as required by 11 U.S.C. § 1322(d), the Debtor is in material default. The Plan appears to exceed the maximum allowable time. This is cause to dismiss this case pursuant to 11 U.S.C. 1307(c)(6).

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.

101. [14-25069-E-13](#) **KENNETH/RENETTE JOHNSON** **MOTION TO DISMISS CASE**
DPC-6 **Richard L. Jare** **8-11-15 [68]**

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 August 11, 2015. 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 deny the Motion to Dismiss without prejudice.

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015. Dckt. 68. The Trustee seeks dismissal on the ground that the Debtor is delinquent.

Debtor filed an opposition on August 26, 2015. Dckt. 72. Debtor declares:

I am resuming payments to the trustee earmarked for August 25th, 2015. I am bringing a cashier's check to my attorney this Friday for \$2,250 which is the first resumed payment under the modified plan.

Dckt. 73, ¶ 2.

Debtor states that Debtor has signed a modified plan, however:

The new plan is filed as an exhibit, but not as a plan. I have a small problem. The joint debtor has not signed the plan. Maybe she will sign the plan tomorrow.

Dckt. 72. A review of the court's docket shows a First Modified Chapter 13 Plan has been filed and signed by both Kenneth Johnson and Renette P. Johnson. Dckt. 76, p. 5, 7. On September 1, 2015, Debtor file a Motion to Confirm the Modified Plan. Dckt. 79.

Trustee asserts that Debtor has only paid \$24,000.00 of the total \$33,600.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$9,600.00 delinquent in plan payments, which represents multiple months of the \$2,700.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed a modified plan and a Motion to Confirm, which is set for hearing on October 6, 2015. Dckt. 79. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 79, 81. 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 denied without prejudice.

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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 August 11, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015. Dckt. 69. The Trustee is seeking dismissal on the ground that the Debtor is delinquent in plan payments.

Debtor filed an opposition on August 12, 2015. Dckt. 73. Debtor's opposition states that the Debtor is contemplating converting the case and requests a continuance to determine the next course of action.

No declaration have been provided by Debtor in opposing the Motion to Dismiss. No evidence has been provided to show the delinquency has been cured.

The Trustee asserts that Debtor has only paid \$5,120.00 of the total \$10,565.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$5,445.00 delinquent in plan payments, which represents multiple months of the \$1,085.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This delinquency dates back to March 2015. The Chapter 13 Trustee dismissed a prior motion to dismiss the case based on this default because Debtor had a prior motion to confirm a modified plan to cure the default.

However, Debtor failed to confirm that modified plan because Debtor continued to be in default under the proposed modified plan. Civil Minutes, June 24, 2015 hearing; Dckt. 60. This further demonstrates that Debtor is not able to prosecute this Chapter 13 case.

Because Debtor provides no evidence to show the delinquency has been cured or that the case is converted, 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.

103. [10-42971-E-13](#) BRUCE TANKERSLEY
DPC-3
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
7-29-15 [[102](#)]

Final Ruling: No appearance at the September 9, 2015 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.

104. [15-23674-E-13](#) RALPH CROSBY
Michael O'Down Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-8-15 [[34](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Ralph Crosby ("Debtor"), Trustee, and other parties in interest on July 8, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 6, 2015).

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

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

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

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

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

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

105. [15-23674-E-13](#) RALPH CROSBY
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-7-15 [[38](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Ralph Crosby ("Debtor"), Trustee, and other parties in interest on August 7, 2015. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 3, 2015).

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

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

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

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

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

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

106. [14-20775-E-13](#) WALTER/PAMELA MERRITT
DPC-1 Karen Ehler

MOTION TO DISMISS CASE
8-11-15 [[28](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

109. [15-25376](#)-E-13 PATRICIA HEUSTESS MOTION TO DISMISS CASE
DPC-1 Pro se 8-7-15 [[15](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 7, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 7, 2015. Dckt. 15. Debtor did not file an opposition.

First, Trustee argues that 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).

Second, 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 did not appear at the continue Meeting of Creditors held on August 6, 2015.

On both grounds, 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 August 5, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 5, 2015. Dckt. 66. The Trustee seeks dismissal on the grounds that the Debtor is delinquent in plan payments.

Debtor filed an opposition on August 26, 2015. Dckt. 70. Debtor claims that "We have saved the required funds and will make a payment by August 31, 2015 to become current with the plan payments." Dckt. 71, ¶ 3.

The Trustee asserts that Debtor has paid \$129,332.35 of the total \$137,341.63 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$8,009.28 delinquent in plan payments, which represents multiple months of the \$2,963.31 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In Debtor's declaration, he stats that "[w]e have saved the required funds..." to cure the \$8,009.28 default and make the current monthly payment of \$2,963.28 in August 2015. This means that Debtor has an "extra" \$8,009.28 in projected disposable income to fund the Chapter 13 Plan. Debtor offers no testimony how, in good faith, such "extra" monies exist to cure the plan default. Under the confirmed Chapter 13 Plan Debtor's financial struggles were so difficult that the dividend to creditors with unsecured claims is 0.00%.

This is while Debtor made \$2,500 a month payments for the residence (\$440.00 to cure the arrearage and \$2,100 post-petition installments) and \$1,461 monthly payment for a second real property. Plan, Dckt. 5.

The court and creditors have relied on the financial information provided under penalty of perjury on Schedules I and J by Debtor. Dckt. 1 at 34-35. Debtor demonstrated that there was only \$3,100 a month of Net Monthly Income, which the court, Chapter 13 Trustee, and creditors relied upon as testimony of the proper computation of projected disposable income. Debtor used this financial information to support paying a 0.00% dividend to creditors with unsecured claims through the Chapter 13 Plan.

Schedule I discloses that Debtor was unemployed, receiving unemployment benefits, and co-Debtor was the sole source of income. The court cannot find any updated or current information in the record as to changes or current financial information for Debtor. It appears that Debtor's monthly net income has increased sufficiently that in a one month period there is an additional \$8,000 of projected disposable income which could properly be used to fund the Chapter 13 Plan. (Debtor choosing not to provide any testimony as to why and how such a significant amount of money could be generated in one month, the court infers that the reason is inconsistent with the prior financial information provided under penalty of perjury.)

Despite Debtor's significant plan payment history, a promise to pay delinquent payments is not sufficient to rebut evidence of delinquent payments. Thus, cause exists to dismiss this case for delinquency. 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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 30, 2015. Dckt. 25. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

Debtor filed an opposition on August 26, 2015. Dckt. 29. Debtor's opposition alleges that the delinquent payments are,

[D]ue to the fact that their payments did not increase from \$961.78 to 1,261.78 as required by their confirmed Chapter 13 Plan. Debtors have advised their attorney that they do not have the immediate ability to cure the missed payments and have scheduled an appointment to meet with their attorney for the preparation of a Modified Chapter 13 Plan. Debtors expect the modified Chapter 13 Plan to excuse missed payments and adjust future plan payments. Like Debtors' confirmed plan, Debtors anticipate the modified Chapter 13 Plan paying 100% to general unsecured creditors.

Dckt. 29. Debtor offers no evidence to support these allegations. FN1.

FN.1. Debtor's counsel failed to provide a Certificate of Proof of Service with the Opposition. This Certificate is required by Fed. R. Bankr. P. Rules 9014 and 7005, which incorporate Fed. R. Civ. P. 5(d)(1).

Trustee asserts that Debtor has paid \$18,345.00 of the total \$22,173.82 due. Dckt. 25. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$3,828.82 delinquent in plan payments, which represents multiple months of the \$1,261.78 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has failed (or refused) to provide any testimony under penalty of perjury in opposition to this Motion. Rather, only argument is presented by Debtor's Counsel in the opposition. Dckt. 29. The Opposition does not merely state a legal opposition to the Motion, but purports to state facts for which there is no evidence.

While forty days have passed since the filing of the Motion to Dismiss, Debtor has not filed a modified plan, motion to confirm, and evidence to support confirmation (as of the court's September 6, 2015 review of the Docket in this case).

An argument that Debtor may choose to file a modified plan is not sufficient to rebut evidence of delinquent payments. 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.

No further or additional relief is granted.

112. [15-24979-E-13](#) LINDA VANPELT
DPC-2 Mary Ellen Terranella

MOTION TO DISMISS CASE
8-26-15 [[35](#)]

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 August 26, 2015. 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 -----
-----.

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 26, 2015. Dckt. 35. Debtor has not filed an opposition.

The Trustee argues that the Debtor did not commence making plan payments and is \$5,608.00 delinquent in plan payments, which represents multiple months of the \$2,804.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Cause exists to dismiss this case for failure to commence plan payments. 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.

113. [11-27780](#)-E-13 RANDALL/KIMBERLEY BEFORT MOTION TO DISMISS CASE
DPC-9 8-11-15 [[65](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Trustee filed a "Notice of Withdrawal" on September 4, 201x, Dckt. 69, stating that the Motion to Dismiss was withdrawn. The court construes this "Notice" as an election to dismiss the Motion to Dismiss the Chapter 13 Case without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Motion having been dismissed without prejudice, the matter is removed from the calendar.**

114. [12-34980](#)-E-13 DENIS/DIANA POTTS MOTION TO DISMISS CASE
DPC-1 7-31-15 [[22](#)]

Final Ruling: No appearance at the September 9, 2015 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.

115. [14-31280](#)-E-13 JANET JENDREJACK MOTION TO DISMISS CASE
DPC-3 Peter L. Cianchetta 8-11-15 [[48](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

116. [10-43981](#)-E-13 SHAUN/PAMELA MYERS MOTION TO DISMISS CASE
DPC-5 Peter G. Macaluso 8-11-15 [[111](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

117. [11-36981](#)-E-13 MONICA SAECHAO MOTION TO DISMISS CASE
DPC-5 Sally C. Gonzales 7-29-15 [[83](#)]

Final Ruling: No appearance at the September 9, 2015 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.**

118. [12-30483](#)-E-13 GARY/KIRSTEN SNYDER MOTION TO DISMISS CASE
DPC-1 Edward A. Smith 7-31-15 [[48](#)]

Final Ruling: No appearance at the September 9, 2015 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.**

119. [12-33383](#)-E-13 JOHN HOLLIS
DPC-1 Michael DeDecker

MOTION TO DISMISS CASE
8-11-15 [[177](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on August 11, 2015. 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 11, 2015. Dckt. 177. Debtor has not filed an opposition.

Trustee asserts that Debtor has paid \$4,950.00 of the \$5,400.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$450.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

120. [13-33583-E-13](#) SUE MARIANO
DPC-2 Charnel J. James

MOTION TO DISMISS CASE
8-11-15 [[136](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The case having previously been dismissed on May 10, 2015, the Motion is dismissed as moot.

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

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

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

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

121. [15-22783](#)-E-13 CRISTOFER ALARCON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-10-15 [[50](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Cristofer Alarcon ("Debtor"), Trustee, and other parties in interest on August 10, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 4, 2015).

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

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

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

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

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

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

122. [15-22783](#)-E-13 CRISTOFER ALARCON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-10-15 [[35](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Cristofer Alarcon ("Debtor"), Trustee, and other parties in interest on June 5, 2015. The court computes that 96 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 June 5, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$76.00].

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

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

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

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

123. [15-22783](#)-E-13 CRISTOFER ALARCON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-10-15 [[47](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Cristofer Alarcon("Debtor"), Trustee, and other parties in interest on July 10, 2015. The court computes that 61 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 6, 2015).

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

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

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

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

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

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

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 July 30, 2015. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August July 30, 2015. Dckt. 87.

Debtor filed an opposition on August 25, 2015. Dckt. 88. Debtor's opposition states that "Debtor will be current on or before the hearing in this matter." Dckt. 88.

Trustee asserts that Debtor has paid \$867.00 of the total \$2,317.00 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$1,450.00 delinquent in plan payments, which represents multiple months of the \$290.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A promise to pay delinquent payments is not sufficient to cure the delinquency. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

125. [15-24584-E-13](#) ALEKSANDR TYSHKEVICH MOTION TO DISMISS CASE
DPC-1 Pro se 8-12-15 [[33](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee, filed this Motion to Dismiss on August 12, 2015. Dckt. 33. Debtor has not filed an opposition.

First, 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).

Second, 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).

Third, Trustee alleges the Debtor did not file a complete Chapter 13 Plan. Reviewing the Plan submitted by Debtor, the sections listing Creditors to be paid under Class 1, 2, 3, 4, 5, 6, and 7 are all blank. Dckt. 25. Additionally, Debtor failed to file business documents with Schedule I to demonstrate the self-employed income of Debtor and Debtor's spouse. Dckt. 23. Failure to file documents requested by the Trustee is further evidence of unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The proposed Chapter 13 Plan filed by Debtor requires a \$45 a month payment for thirty-six months. Dckt. 25. No provision is made for any claims to be paid from the \$45 a month. On Schedule A Debtor states that he owns one piece of real property with a value of \$650,000, which is not encumbered by any liens. Dckt 23 at 3. On Schedule D Debtor states under penalty of perjury that he has no creditors with claims secured by liens on any property of Debtor. *Id.* at 9. On Schedule F Debtor lists a number of creditors, including several which commonly holds claims secured by a consumer's residence. *Id.* at 13-15.

On Schedule I Debtor states that he and his non-debtor spouse have monthly net income from their business of \$2,313. *Id.* at 19. On Schedule J Debtor states under penalty of perjury that he has no mortgage or rental expense. *Id.* at 21.

A proof of claim has been filed for Bank of New York Mellon, N.A., Trustee, by Real Time Resolution. Proof of Claim No. 2. Bank of New York Mellon, N.A., Trustee, asserts a secured claim in the amount of \$272,736.85, for which the collateral is stated to be 10115 Lupine Lane. This property is listed as Debtor's residence on the bankruptcy Petition and is listed as property of the Debtor on Schedule A. Dckt. 1; Dckt. 23 at 3. No provision is made in the Plan for this secured claim or for disputing the lien and claim asserted by Bank of New York Mellon, N.A., Trustee.

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

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

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

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

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

126. [14-28685-E-13](#) STEVEN WARNOCK
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
6-15-15 [[41](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Steven Warnock ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 15, 2015. The court computes that 86 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees in this case (\$25.00 due on May 31, 2015).

The court's decision is to discharge the Order to Show Cause, no sanctions ordered.

The court's docket reflects that the default in payment of the fee for transfer of claim 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.

127. [11-49386-E-13](#) CHRISTINA SCOTT
DPC-6 Mary Ellen Terranella

MOTION TO DISMISS CASE
7-29-15 [[60](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

128. [12-27387](#)-E-13 ERROL/MELANI LAYTON
DPC-2 Mary Ellen Terranella

MOTION TO DISMISS CASE
8-11-15 [[157](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

129. [12-30588](#)-E-13 DIANE/OSVALDO MALDONADO MOTION TO DISMISS CASE
DPC-4 Matthew R. Eason 8-11-15 [[164](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

130. [13-33589](#)-E-13 DANIEL/JOIE SHANE MOTION TO DISMISS CASE
DPC-3 Julius J. Cherry 7-30-15 [[86](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Trustee filed a "Notice of Withdrawal" on September 3, 2015, Dckt. 90, stating that the Motion to Dismiss was withdrawn. The court construes this "Notice" as an election to dismiss the Motion to Dismiss the Chapter 13 Case without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Motion having been dismissed without prejudice, the matter is removed from the calendar.**

131. [12-41091](#)-E-13 REBECCA GAGE
DPC-4 Peter G. Macaluso

MOTION TO DISMISS CASE
8-10-15 [[63](#)]

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 August 10, 2015. 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 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 granted the Motion to Dismiss and dismiss the case.

David Cusick, as Chapter 13 Trustee, filed the instant Motion to Dismiss on August 10, 2015. Dckt. 63.

Debtor filed an opposition on August 25, 2015. Dckt. 73. Debtor's opposition claims "Debtor will be current on or before the hearing." Dckt. 73.

The Debtor has not filed any evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,125.00 delinquent in plan payments, which represents multiple months of the \$225.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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.

132. [14-20594-E-13](#) ANNETTA WATSON MOTION TO DISMISS CASE
DPC-3 Scott D. Hughes 7-29-15 [[27](#)]

Final Ruling: No appearance at the September 9, 2015 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 July 29, 2015. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on July 29, 2015. Dckt. 27. Debtor did not file opposition to this motion.

Trustee asserts that Debtor has paid \$19,097.00 out of the total \$24,460.73 due. Thus, Trustee seeks dismissal of the case on the basis that the Debtor is \$5,363.73 delinquent in plan payments, which represents multiple months of the \$1,365.39 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

133. [15-21394](#)-E-13 MICHAEL/JENNIFER WOODWARD ORDER TO SHOW CAUSE - FAILURE
Jeremy Heebner TO PAY FEES
6-29-15 [[23](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michael and Jennifer Woodward ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 29, 2015. The court computes that 72 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on June 24, 2015).

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

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

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

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

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

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

134. [15-22094-E-13](#) RL/AMY WARD
DPC-2 Mark W. Briden
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
7-30-15 [[34](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

135. [15-24495-E-13](#) JAMES/DANIELLE VINCENT
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-15 [[23](#)]

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

The Order to Show Cause was served by the Clerk of the Court on James and Danielle Vincent ("Debtor"), Trustee, and other parties in interest on July 7, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on July 2, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

136. [15-24495](#)-E-13 JAMES/DANIELLE VINCENT
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-6-15 [[29](#)]

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

The Order to Show Cause was served by the Clerk of the Court on James and Danielle Vincent ("Debtor"), Trustee, and other parties in interest on August 8, 2015. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 3, 2015).

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

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

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

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

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

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

137. [15-24495-E-13](#) JAMES/DANIELLE VINCENT
DPC-2 Pro se

MOTION TO DISMISS CASE
8-12-15 [[31](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee ("Trustee"), filed this Motion to Dismiss on August 12, 2015. Dckt. 31. Debtor presented no opposition to the Motion.

First, the Trustee argues that the Debtor did not commence making plan payments and is \$300.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Second, 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). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Finally, Debtor has not complied with this court's Order Approving Payment of Filing Fee in Installments. Dckt. 7. An Order to Show Cause was filed by this court for Debtor to appear on September 9, 2015 to demonstrate why this case should not be dismissed for failure to pay the filing fee. Dckt. 23. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

On the grounds presented, 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.

No further or additional relief is granted.

138. [15-24796](#)-E-13 CHRISTOPHER/SARA VENTURA ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
8-19-15 [[49](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Christopher and Sara Ventura ("Debtors"), Trustee, and other parties in interest on August 19, 2015. 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 (\$77.00 due on August 14, 2015).

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

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

139. [15-24796-E-13](#) CHRISTOPHER/SARA VENTURA MOTION TO DISMISS CASE
DPC-2 Pro se 8-12-15 [[45](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee ("Trustee"), filed this Motion to Dismiss on August 12, 2015. Dckt. 45. Debtor presented no opposition to the Motion.

The Trustee argues that the Debtor did not commence making plan payments and is \$2,850.00 delinquent in plan payments, which represents one month of the \$2,850.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Also, 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

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U.S.C. § 1307(c)(1).

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

The Trustee alleges that Debtor failed to complete the Statement of Financial Affairs by omitting Debtor's income for part of Debtor's two-year employment history and omitting rental income. Dckt. 20, Schedules I, J (states \$4,800.00 gross income from employment for past two years; listing \$2,000.00 monthly rental income); and Dckt. 20, Statement of Financial Affairs, p. 23-24 (lists income from Sovran Star Stables for this calendar year, but fails to list gross income from preceding two years on question 1; omits income from rental property on question 2).

Further, Trustee notes that Debtor has three prior bankruptcy filings. A review of the court's docket shows three prior cases, listed below:

Case Number	Filing Date	Dismissal Date	Reason for Dismissal
13-23372	3/13/2013	8/9/2013	Failure to file plan and serve required documents on all interested parties; Dckt. 66
13-32210	9/18/2013	2/20/2014	Delinquent payments and failure to file amended plan; Dckt. 34.
14-25173	5/16/2014	7/9/2014	Failure to provide tax documents and unreasonable delay; Dckt. 49.

For the above grounds, 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.

No further or additional relief is granted.

140. [15-23397](#)-E-13 JASON/SANDRA PERKINS MOTION TO DISMISS CASE
DPC-2 Eric John Schwab 8-12-15 [[45](#)]

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 August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 12, 2015. Dckt. 45

The Debtor filed an opposition on August 26, 2015. Dckt. 49. Debtor's Opposition to this Motion only states that Debtor has prepared a modified plan, which will be filed on or before the hearing date of this motion.

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 June 30, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan (As of the court's September 6, 2015 review of the Docket for this bankruptcy case). 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).

Based on the unreasonable delay in filing an amended plan, 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.

141. [15-24997-E-13](#) DAVID/AMY POST MOTION TO DISMISS CASE
DPC-2 Mary Ellen Terranella 8-26-15 [[34](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

The Trustee filed a "Notice of Withdrawal" on September 4, 2015, Dckt. 41, stating that the Motion to Dismiss was withdrawn. The court construes this "Notice" as an election to dismiss the Motion to Dismiss the Chapter 13 Case without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Motion having been dismissed without prejudice, the matter is removed from the calendar.**

142. [11-25898-E-13](#) CINDY STINSON MOTION TO DISMISS CASE
DPC-1 Michael O'Dowd Hays 7-29-15 [[65](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

143. [11-30298-E-13](#) BONIFACIO/ALICIA LOYOLA MOTION TO DISMISS CASE
DPC-1 Mark A. Wolff 8-11-15 [[35](#)]

Final Ruling: No appearance at the September 9, 2015 hearing is required.

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

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

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

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

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

144. [15-24698-E-13](#) WALLEN YEP MOTION TO DISMISS CASE
DPC-2 Jonathan D. Matthews 8-12-15 [[34](#)]

Final Ruling: No appearance at the September 9, 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 Debtor (pro se) and Office of the United States Trustee on August 12, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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, as Chapter 13 Trustee, filed the instant Motion to Dismiss on August 12, 2015. Dckt. 34. The Trustee seeks dismissal for delinquency in payments, an incomplete Chapter 13 plan, and for failure to provide the Trustee with tax returns.

First, the Trustee argues that the Debtor filed a blank payment plan

on June 24, 2015. Dckt. 34, ¶ 2; Dckt. 14. Debtor offers no explanation for why the plan was filed but only partially completed. A review of the docket shows that no amended plan has been provided by Debtor. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Second, the Trustee argues that the Debtor did not commence making plan payments and is delinquent. As the plan's monthly payments section is not complete, the amount of delinquency is indeterminable. Nevertheless, 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.

Third, the Debtor has not provided the Trustee with 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.

Finally, Trustee notes that the Debtor has 4 prior bankruptcy cases which were not listed on Debtor's petition. Below is the court's review of those cases:

Case Number	Date Petition Filed	Date of Dismissal Order	Reason for Dismissal
11-23126	2/8/2011	3/18/2011	521(I) Failure to file required documents; Dckt. 29.
12-26680	4/5/2012	6/22/2012	Failure to pay fees; Dckt. 30.
12-33657	7/25/2012	7/30/2013	Voluntary dismissal. Dckt. 67.
14-29262	9/16/2014	12/3/2014	Failure to file documents from interim order. Dckt. 34.

Because Debtor did not disclose these prior filings in the initial petition, this court finds that this is sufficient cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

While the court notes that an amended plan was filed on September 1, 2015, no Motion to Confirm has been filed.

On these grounds, 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.

145. [14-90249-E-7](#) SCOTT MYERS
JY-6 Thomas Polis

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH IMH FINANCIAL
CORPORATION AND SCOTT MYERS
8-10-15 [[123](#)]

Final Ruling: No appearance at the September 9, 2015 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, Chapter 7 Trustee, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on August 10, 2015. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion For Approval of Compromise 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 for Approval of Compromise is granted.

IMH Financial Corporation ("IMH") and Scott Myers ("Debtor") requests that the court approve a compromise and settle competing claims and defenses

resolving the revocation of the Debtor's discharge and dismissal of IMH's adversary complaint for revocation to discharge in Adversary Proceeding No. 14-09026.

IMH and Debtor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit 1 in support of the Motion, Dckt. 131):

- A. The Debtor's discharge shall be revoked.
 - 1. Nothing in the stipulation or any order thereon shall prevent Debtor from filing a subsequent bankruptcy petition following the dismissal of the court or prevent Debtor from subsequently attempting to discharge any and all claims against him that existed as of February 2, 2014.
 - 2. Nothing in this stipulation or any order thereon shall preclude IMH from taking any subsequent judgment enforcement actions against the Debtor, or from filing an objection to discharge or complaint for the revocation of discharge in any subsequent bankruptcy case initiated by the Debtor.
- B. Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), made applicable to this proceeding by Fed. R. Bankr. P. 7041, the Adversary Proceeding No. 14-09026 shall be dismissed without prejudice.
- C. Each party shall bear its own attorneys' fees and costs incurred in resolving the Adversary Proceeding

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

- 1. The probability of success in the litigation;
- 2. Any difficulties expected in collection;
- 3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
- 4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Probability of Success

The parties do not address this factor.

Difficulties in Collection

The parties do not address this factor.

Expense, Inconvenience and Delay of Continued Litigation

The parties argues that litigation would result in significant costs, which are projected based on the unsettled nature of the claim, given the questions of law and fact which would be the subject of a trial. Formal discovery would be required, with depositions based on the complaint to revoke discharge. The parties estimates that if the matter went to trial, litigation expenses would consume a substantial amount of the estate’s assets.

The parties assert that the stipulation preserves resources and maximizes the assets of the estate.

Paramount Interest of Creditors

The parties argues that settlement is in the paramount interests of creditors since as the compromise provides prompt payment to creditors which could be consumed by the additional costs and administrative expenses created by further litigation.

Further, the parties argue that the stipulation allows for the Debtor to file a subsequent bankruptcy case to discharge claims that existed as of February 24, 2015 while still reserving IMH’s right to take enforcement actions and the right to object to discharge in any other cases.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to the Movant to purchase or prosecute the property, claims, or interests of the estate to present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate.

The stipulation provides for the resolution of not only of the Adversary Proceeding but also dismisses the instant case. It offers the Debtor the option to file subsequent cases while still preserving any and all rights of IMH. The stipulation avoids the estate from incurring additional costs that would harm any creditors.

As to the stipulation to the discharge, 11 U.S.C. § 727(d) allows for the court to revoke a discharge after notice and a hearing. While the Debtor does not have standing to request the revocation of discharge, the construes that request to be from IMH, who, as a creditor, has standing to request a revocation of discharge. 11 U.S.C. § 727(d).

The motion is granted.

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

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

The Motion to Approve Compromise filed by IMH Financial Corporation ("IMH") and Scott Myers ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Compromise between IMH and Debtor is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit 1 in support of the Motion(Docket Number 131).

CHAMBERS PREPARED SUPPLEMENTAL ORDER IN BANKRUPTCY CASE

The court shall issue a separate Order (not a minute order) in substantially in the following form holding that:

**ORDER REVOKING DISCHARGE PURSUANT TO
STIPULATION WITH DEBTOR**

The court has approved the Stipulation between IMH Financial Corporation ("IMH"), a creditor in this case, and Scott Myers ("Debtor"), the Debtor, for the revocation of the Debtor's discharge in this bankruptcy case. Order, Dckt. Xxx. The Stipulation having been approved, and upon review of the files in this case and Adversary Proceeding No. 14-09026, and good cause appearing,

IT IS ORDERED that the discharge of Scott Myers, entered on June 3, 2014 (Dckt. 34), is revoked pursuant to 11 U.S.C. § 727(d).

CHAMBERS PREPARED SUPPLEMENTAL ORDER IN ADVERSARY PROCEEDING NO. 14-09026

The court shall issue a separate Order (not a minute order) in substantially in the following form holding that:

**ORDER REVOKING DISCHARGE PURSUANT TO
STIPULATION WITH DEBTOR**

The court has approved the Stipulation between IMH Financial Corporation ("IMH"), a creditor in this case, and Scott Myers ("Debtor"), the Debtor, for the revocation of the Debtor's discharge in this bankruptcy case. Bankr. Case No. 15-24689; Order, Dckt. Xxx. The Debtor's discharge having been revoked, the Stipulation of Plaintiff IMH and Defendant Debtor for the dismissal of this Adversary Proceeding, and

upon the review of the files in this case and Bankruptcy Case No. 15-24689, 14-09026 and good cause appearing,

IT IS ORDERED that, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), made applicable to this proceeding by Fed. R. Bankr. P. 7041, this Adversary Proceeding No. 14-09026 is dismissed without prejudice.

146. 14-90249-E-7 **SCOTT MYERS**
CWS-3 **Thomas Polis**

**MOTION FOR COMPENSATION BY THE
LAW OFFICE OF NEUMILLER AND
BEARDSLEE FOR CLIFFORD W.
STEVENS, TRUSTEES ATTORNEY(S)
8-4-15 [[108](#)]**

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on August 4, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion for Allowance of Professional Fees is granted.

Neumiller & Beardslee, a Professional Corporation, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee("Client"), makes a First and Final for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period of March 2014 through July 2015. The order of the court approving employment of Applicant was entered on April 30, 2014, Dckt. 29. Applicant requests fees in the amount of \$31,783.50 and costs in the amount of \$52.90.

UNITED STATES TRUSTEE'S OBJECTION

Tracy Hope Davis, the United States Trustee, ("UST") filed a limited objection to the instant Motion. Dckt. 128. The UST objects to the amount requested by the Applicant, particularly in the category of "general investigation," where a senior associate was performing document review. The UST argues that the objection should be sustained and the application should be denied as to the extent it seeks compensation for tasks that should have been delegated to junior staff.

DEBTOR'S OPPOSITION

Scott Myers ("Debtor") filed an opposition to the instant Motion on August 31, 2015. Dckt. 133. The Debtor argues that the Applicant has not shown how the services rendered benefitted the estate. The Debtor also argues that the Applicant has not explained how the Applicant's efforts were not duplicative of the legal efforts by the Debtor's largest unsecured creditor, IMH (who holds an unsecured claim exceeding \$280,000,000.00).

APPLICANT'S REPLY

The Applicant filed a reply on September 2, 2015. Dckt. 135. The Applicant states that after conversations with the UST, the Applicant has agreed to reduce the request for fees and costs by the total amount of \$2,500.00. If the underlying chapter 7 case is not dismissed and an amended final fee application is filed by Applicant, the voluntary reduction of \$2,500.00 is without prejudice and Applicant may seek to be paid the full amount of the fee application.

In light of this reduction, the Applicant is now seeking a total fee and cost award of \$29,336.40.

UNITED STATES TRUSTEE'S WITHDRAWAL OF OBJECTION

The UST filed a request to withdraw her objection based on the agreed reduction of fees. Dckt. 137.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

September 9, 2015 at 10:00 a.m.

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including preliminary case review, fee and employment applications, communications with client, Debtor, and creditors, investigation of entities owned by Debtor, issues concerning the trust, 2004 exams, and Motion to Dismiss. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Preliminary Case Review Applicant spent 2.7 hours in this category. Applicant assisted Client with reviewing general case and financial issues of the Debtor and strategizing for litigation and other case issues.

Fee/Employment Applications: Applicant spent 6.8 hours in this category. Applicant prepared employment applications and fee applications for the Applicant and other professionals..

Communications with Client: Applicant spent 2.0 hours in this category. Applicant communicated with Client concerning case.

Communications with Debtor and Others including IMH and Miscellaneous Research: Applicant spent 2.4 hours in this category. Applicant communicating with the Debtor and creditors over the case and respective claims.

Del Valle Financials and Investigations: Applicant spent 3.2 hours in this category. Applicant investigated Del Valle Capital Corporation which is a business wholly owned by Debtor and the accompanying finances.

Milagros GmbH/IMC 4/German Connect: Applicant spent 12.3 hours in this category. Applicant investigated assets in Germany and translated documents related to potential assets of the estate in Germany.

Debtor Financial Review: Applicant spent 2.1 hours in this category. Applicant investigated documents specific to Debtor, including financial returns.

Trust Issues: Applicant spent 9.1 hours in this category. Applicant investigated Jim D. Myers 1990 Living Trust since the Debtor was named the trustee following the death of Debtor's father. The Applicant spent time to understand the trust, the assets of the trust, and the potential gain to the

estate if a challenge to the trust was pursued.

General Investigation: Applicant spent 54.8 hours in this category. Applicant investigated financial connections between claims, real property, and financial dealings related to the Debtor, which took significant time in light of the large number of entities, persons, and addresses connected to the case.

Rule 2004 Exam by IMH: Applicant spent 6.8 hours in this category. Applicant telephonically listening to 2004 exam of Debtor conducted by IMH.

Motion to Dismiss: Applicant spent 2.7 hours in this category. Applicant reviewed and participated in two Motions to Dismiss.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Clifford Stevens, Esq. (2014)	85.90	\$325.00	\$27,917.50
Clifford Stevens, Esq. (2015)	3.30	\$335.00	\$1,105.50
Michael Tener (2014)	2.3	\$265.00	\$609.50
Melissa Giannecchini (2014)	.5	\$250.00	\$125.00
Nick Hoban (2014)	8.8	\$165.00	\$1,452.00
Kim Abdallah (2015)	4.1	\$140.00	\$574.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$31,783.50

Pursuant to the response filed by Applicant, the Applicant has agreed to reduce the fee request by \$2,500.00 to a total of \$29,336.40.

Costs and Expenses

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$52.90 pursuant to this applicant.

The costs requested in this Application are,

Description of Cost	Per Item Cost, If Applicable	Cost

Postage		\$7.80
Photocopies	\$0.10	\$45.10
Total Costs Requested in Application		\$52.90

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided, after the consented to reduction in the fees of \$2,500.00. First and Final Fees in the amount of \$29,336.40 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In considering Debtor's election to have his discharge revoke and this case dismissed, the court notes that the Trustee and attorney have been required to investigate, pursue, and attempt to recover property of the estate through very complex, multi-national transactions engaged in by Debtor. This also includes the Debtor's, and possible estate interests, in Debtor's father's trust, for which Debtor has served as the trustee.

A review of this case shows that the main parties in both the bankruptcy case and the adversary proceeding have been the Debtor and IMH Financial Corporation. The case was filed on February 24, 2015 and the Debtor received his discharge on June 3, 2014. Dckt. 34.

The Trustee performed a Meeting of Creditors on May 1, 2014 which was continued due to Debtor and Debtor's counsel not appearing. The Continued Meeting of Creditors took place on May 29, 2014, where once again Debtor and Debtor's counsel did not appear. The next Continued Meeting of Creditors took place on June 26, 2014, where once again the Debtor and Debtor counsel did not appear. Finally, on July 24, 2014, the continued Meeting was held and concluded and the Trustee issued his Notice of Assets. The only substantive motion filed by the Trustee was the Motion to Employ Trustee's counsel. Dckt. 25. These were the only actions taken by the Trustee as reflected by the case docket.

The remaining matters to arise in the case came from IMH Financial Corporation in the form of Motion for Examination and for Production of Documents (Dckt. 19), Objection to Debtor's Claim of Exemptions (Dckt. 38), Motion to Dismiss Case (Dckt. 44), Objection to Debtor's Claim of Exemptions (Dckt. 54), and Motion to Dismiss the Case (Dckt. 60).

Reviewing the Debtor's schedules, it appears that the Debtor has only two assets which may have value for the estate: (1) 2009 Mercedes Benz 180C (\$17,500.00) and (2) Debtor's interest in Father's Trust (\$10,000.00). However, the Trustee does not provide any evidence nor is it apparent from the docket that the Trustee has taken any action in order to liquidate these assets for the benefit of the estate.

This case has been much more challenging for the Trustee due to the Debtor's conduct in moving assets out of the country. As asserted by IMH,

"Movant asserts that the case should be dismissed based on the following grounds:

A. Debtor demonstrates in his Schedules and Statements that he has only minimal assets in the United States. In Schedule A, Debtors lists that he has no interest in real property. In Schedule B, Debtor claims he owns only \$89,750.00 in personal property, but acknowledges that artwork and furniture valued at \$55,000.00 may be located either in California or at Debtor's address in Germany. Debtor later admitted under oath that the artwork valued at \$45,000.00 is actually located in Germany. Further, since Debtor's California address is listed online as being only 800 square feet, it is plausible that most of the furniture is in Germany, as well. This leaves only \$34,750.00 in personal property in the United States, consisting of a car valued at \$17,500.00, a trust account with \$10,000.00, a \$5,000.00 watch, and \$1,000.00 in clothing.

B. Debtor's testimony during his Rule 2004 Examination demonstrates that many assets Debtor claimed were in the United States are actually in Germany, leaving de minimus property in the U.S. Debtor further stated that he has 3,800.00 in a German bank account, which is about \$5,100.00, not the \$500.00 as stated on his Schedules. Debtor's testimony also disclosed Debtor's intent to return to Germany after he discharges his debts. Debtor's wife and children still reside in Germany, and Debtor pays rent of about 3,900.00 (\$5,250.00) for his family's residence in Germany, in addition to expenses for that residence. In contrast, Debtor pays \$590 in monthly rent for the 800 square-foot property in Modesto. Additionally, Debtor transferred about \$10,000.00 in funds held by one of his trusts in the United States to Germany and is using those funds for living expenses, all after filing the instant case. Movant alleges that Debtor is merely renting a residence in Modesto to create the facade of eligibility to file bankruptcy here and return to Germany after he has discharged his debt to U.S. creditors."

Civil Minutes, Dckt. 85. This information indicates that this is a significantly complex Chapter 7 case, well beyond the norm.

One of the most basic, and easiest, duties of a bankruptcy debtor and his counsel is to attend the First Meeting of Creditors. All debtors seeking relief under the Bankruptcy Code have a duty to "appear and submit to examination under oath at the meeting of creditors" (11 U.S.C. § 343), to "cooperate with the trustee as necessary" to enable him or her to perform his or her duties as trustee (11 U.S.C. § 521(a)(3)), and to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4). See *In re Lebbos*, No. 06-22225-D-7, 2007 WL 2859781, at *3 (Bankr. E.D. Cal. Sept. 24, 2007). The Supreme Court has emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See *Taylor v. Freeland & Fronz*, 503 U.S. 638, 644, 112 S.Ct. 1644. "The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Where more

information must be gathered, the meeting can be adjourned to a definite time; there is no limit on the number of adjournments." See *id.*

The failure to attend such a meeting often signals a less than good faith motive in filing a bankruptcy case or in the prosecution of the case. Such failure significantly impacts the credibility of the debtor and the information provided by Debtor under penalty of perjury on the Schedules and Statement of Financial Affairs. Such inaction can cause a trustee to expend otherwise unnecessary time and expense in beginning investigations as to what assets may not have been disclosed or what "game" is afoot in the case.

Costs and Expenses

The First and Final Costs in the amount of \$52.90 are approved pursuant to 11 U.S.C. § 330] and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$29,336.40
Costs and Expenses	\$52.90

pursuant to this Application as final fees pursuant to 11 U.S.C. § 330 in this case. FN.1.

FN.1. The Trustee does not testify to or provide information as to what assets and monies the Trustee has for the estate. The court does not know whether the approval of fees will have any practical economic impact or is merely an academic exercise. However, Counsel for the Trustee has provided services to the bankruptcy estate and a value for fees relating thereto are properly determined.

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

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

The Motion for Allowance of Fees and Expenses filed by Neumiller & Beardslee, a Professional Corporation, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Neumiller & Beardslee, a Professional Corporation is allowed the following fees and expenses as a professional of the Estate:

Neumiller & Beardslee, a Professional Corporation,
Professional Employed by Trustee

Fees in the amount of \$29,336.40
Expenses in the amount of \$52.90,

The Fees and Costs pursuant to this Applicant are approved as final fees and costs pursuant to 11 U.S.C. § 330.

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

147. [14-90249-E-7](#) SCOTT MYERS
CWS-4 Thomas Polis

MOTION FOR COMPENSATION FOR
GARY FARRAR, CHAPTER 7
TRUSTEE(S)
8-4-15 [[114](#)]

Tentative Ruling: The Motion For Compensation for Chapter 7 Trustee 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, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 31, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Trustee Fees 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 non-responding parties 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 for Allowance of Trustee Fees is granted and the Chapter 7 is allowed \$2,700.00 in fees.

Gary Farrar ("Applicant"), the Chapter 7 Trustee for the bankruptcy estate of Scott Myers ("Debtor"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

The period for which the fees are requested is for the period of February 24, 2014 to August 4, 2015. Applicant requests fees in the amount of \$2,700.00.

STATUTORY BASIS FOR TRUSTEE FEES

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a professional are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must still demonstrate that the work

performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to reviewing the schedules, preparing and attending Meeting of Creditors, employing and strategizing over legal issues, reviewing information from creditor IMH Financial and coordinating in reducing estate expenses. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

The Bankruptcy Code limits the maximum amount of fees which a Chapter a Chapter 7 or Chapter 11 trustee may be paid in a bankruptcy case. Pursuant to 11 U.S.C. § 326(a),

In a case under chapter 7 or 11, the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25% on the first \$5,000 or less, 10% on any amount in excess of \$5,000 but not in excess of \$50,000, 5% on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3% of such monies in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by th trustee to parties in interest, excluding the debtor, but including holders of secured claims.

FEES REQUESTED

Fees

Applicant states that he has not kept any time records on the case but has reconstructed events by a review of the file.

The Applicant states that services provided included: (1) reviewing the schedules and statement of financial affairs; (2) preparing for and attending

the meeting of creditors; (3) employing and strategizing with counsel regarding the legal issues presented; (4) reviewing documents presented by Debtor; (5) reviewing information from creditor IMH Financial and coordinating with them to reduce estate expenses; and (6) attending occasional motions related to the case.

Based on the Applicants re-construction of services performed the Applicant requests the following:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
Gary Farrar	9.0	\$300.00	\$2,700.00
	0	\$0.00	<u>\$0.00</u>
Total Fees For Period of Application			\$2,700.00

FEES ALLOWED

A review of this case shows that the main parties in both the bankruptcy case and the adversary proceeding have been the Debtor and IMH Financial Corporation. The case was filed on February 24, 2015 and the Debtor received his discharge on June 3, 2014. Dckt. 34.

The Trustee performed a Meeting of Creditors on May 1, 2014 which was continued due to Debtor and Debtor’s counsel not appearing. The Continued Meeting of Creditors took place on May 29, 2014, where once again Debtor and Debtor’s counsel did not appear. The next Continued Meeting of Creditors took place on June 26, 2014, where once again the Debtor and Debtor counsel did not appear. Finally, on July 24, 2014, the continued Meeting was held and concluded and the Trustee issued his Notice of Assets. The only substantive motion filed by the Trustee was the Motion to Employ Trustee’s counsel. Dckt. 25. These were the only actions taken by the Trustee as reflected by the case docket.

The remaining matters to arise in the case came from IMH Financial Corporation in the form of Motion for Examination and for Production of Documents (Dckt. 19), Objection to Debtor’s Claim of Exemptions (Dckt. 38), Motion to Dismiss Case (Dckt. 44), Objection to Debtor’s Claim of Exemptions (Dckt. 54), and Motion to Dismiss the Case (Dckt. 60).

Reviewing the Debtor’s schedules, it appears that the Debtor has only two assets which may have value for the estate: (1) 2009 Mercedes Benz 180C (\$17,500.00) and (2) Debtor’s interest in Father’s Trust (\$10,000.00). However, the Trustee does not provide any evidence nor is it apparent from the docket that the Trustee has taken any action in order to liquidate these assets for the benefit of the estate.

This case has been much more challenging for the Trustee due to the Debtor’s conduct in moving assets out of the country. As asserted by IMH,

"Movant asserts that the case should be dismissed based on the following grounds:

A. Debtor demonstrates in his Schedules and Statements that he has only minimal assets in the United States. In Schedule A, Debtors lists that he has no interest in real property. In Schedule B, Debtor claims he owns only \$89,750.00 in personal property, but acknowledges that artwork and furniture valued at \$55,000.00 may be located either in California or at Debtor's address in Germany. Debtor later admitted under oath that the artwork valued at \$45,000.00 is actually located in Germany. Further, since Debtor's California address is listed online as being only 800 square feet, it is plausible that most of the furniture is in Germany, as well. This leaves only \$34,750.00 in personal property in the United States, consisting of a car valued at \$17,500.00, a trust account with \$10,000.00, a \$5,000.00 watch, and \$1,000.00 in clothing.

B. Debtor's testimony during his Rule 2004 Examination demonstrates that many assets Debtor claimed were in the United States are actually in Germany, leaving de minimus property in the U.S. Debtor further stated that he has 3,800.00 in a German bank account, which is about \$5,100.00, not the \$500.00 as stated on his Schedules. Debtor's testimony also disclosed Debtor's intent to return to Germany after he discharges his debts. Debtor's wife and children still reside in Germany, and Debtor pays rent of about 3,900.00 (\$5,250.00) for his family's residence in Germany, in addition to expenses for that residence. In contrast, Debtor pays \$590 in monthly rent for the 800 square-foot property in Modesto. Additionally, Debtor transferred about \$10,000.00 in funds held by one of his trusts in the United States to Germany and is using those funds for living expenses, all after filing the instant case. Movant alleges that Debtor is merely renting a residence in Modesto to create the facade of eligibility to file bankruptcy here and return to Germany after he has discharged his debt to U.S. creditors."

Civil Minutes, Dckt. 85. This information indicates that this is a significantly complex Chapter 7 case, well beyond the norm.

One of the most basic, and easiest, duties of a bankruptcy debtor and his counsel is to attend the First Meeting of Creditors. All debtors seeking relief under the Bankruptcy Code have a duty to "appear and submit to examination under oath at the meeting of creditors" (11 U.S.C. § 343), to "cooperate with the trustee as necessary" to enable him or her to perform his or her duties as trustee (11 U.S.C. § 521(a)(3)), and to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4). See *In re Lebbos*, No. 06-22225-D-7, 2007 WL 2859781, at *3 (Bankr. E.D. Cal. Sept. 24, 2007). The Supreme Court has emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See *Taylor v. Freeland & Fronz*, 503 U.S. 638, 644, 112 S.Ct. 1644. "The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Where more

information must be gathered, the meeting can be adjourned to a definite time; there is no limit on the number of adjournments." See *id.*

The failure to attend such a meeting often signals a less than good faith motive in filing a bankruptcy case or in the prosecution of the case. Such failure significantly impacts the credibility of the debtor and the information provided by Debtor under penalty of perjury on the Schedules and Statement of Financial Affairs. Such inaction can cause a trustee to expend otherwise unnecessary time and expense in beginning investigations as to what assets may not have been disclosed or what "game" is afoot in the case.

Trustee's compensation of \$2,700.00 is not unreasonable for the services provided. The Trustee provides his testimony that he has spent at least nine hours working on this case. Declaration, Dckt. 116. Just from the continued first meeting of creditors, the Trustee must have spent at least this much time in preparing for, rescheduling, and attempting to conduct such meetings. Additionally, the Debtor's very complex, multi-national financial transactions demonstrates that a bankruptcy trustee, acting in good faith, complying with his fiduciary duties necessarily had to spend more than nine hours of time. FN.1.

FN.1. The Trustee does not testify to or provide information as to what assets and monies the Trustee has for the estate. The court does not know whether the approval of fees will have any practical economic impact or is merely an academic exercise. However, the Trustee has provided services to the bankruptcy estate and a value for fees relating thereto are properly determined.

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

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

The Motion for Allowance of Fees and Expenses filed by Gary Farrar ("Applicant"), Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the Gary Farrar, the Chapter 7 Trustee, is allowed \$2,700.00 in total compensation (inclusive of all costs) pursuant to 11 U.S.C. § 326 for this bankruptcy case.

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, creditors, and Office of the United States Trustee on June 26, 2015. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss the Chapter 7 Bankruptcy Case is denied without prejudice.

This Motion has been filed by Scott Myers ("Debtor") to dismiss this case. The Debtor seeks to have the case dismissed pursuant to 11U.S.C. § 707(a) because the cost of litigating IMH financial Corporation's Adversary Proceeding No. 14-09026 has become too costly. While the Debtor received his discharge on June 3, 2014, the Adversary Proceeding seeks to revoke the Debtor's discharge under § 727(d). The Debtor states that he has obtained the consent of IMH Financial Corporation as to the dismissal. The Debtor asserts that no creditor would be prejudiced because they would be able to pursue their rights outside the bankruptcy.

Additionally, the Debtor argues that the case should be dismissed without prejudice because there are no extenuating circumstances and there have been no findings that Debtor engaged in any bad faith that has caused prejudiced.

IMH FINANCIAL CORPORATION RESPONSE

IMH Financial Corporation filed a response on July 7, 2015. Dckt. 96. IMH Financial Corporation states that it does not oppose the Debtor's requests to dismiss the bankruptcy case, provided that the Debtor's discharge is revoked concurrent with or prior to the dismissal of the Debtor's case so that IMH Financial Corporation may pursue any and all post-judgment collection and general execution remedies available. IMH Financial Corporation states that it does not take any position over whether a bar on the Debtor refileing is proper.

TRUSTEE'S OPPOSITION

Gary Farrar, the Chapter 7 Trustee, filed a conditional opposition on July 9, 2015. Dckt. 98. The Trustee states that he and his professions have incurred fees and expenses that will not be compensated if the case is dismissed and the estate has no funds to pay those fees. The Trustee states that the dismissal should be conditioned on paying the fees and expenses. The Trustee asserts that the administrative claims to date are approximately \$31,000.00.

The Trustee states that IMH Financial Corporation is the largest creditor who does not oppose the Motion to Dismiss as long as the Debtor's discharge is revoked. The Trustee also states that Pacific Western Bank, the second largest creditor, has notified the Trustee that it does not oppose the Debtor's Motion.

DEBTOR'S REPLY

The Debtor filed a reply to the Trustee's conditional opposition on July 16, 2015. Dckt. 101. The Debtor states that the Trustee's counsel does not provide any detail or explanation of the fees and costs incurred. Additionally, the Debtor states that the Trustee's counsel has not provided admissible evidence of how the \$30,460.94 of fees and costs in any way benefitted the estate. The Debtor points to the fact that only two sets of uploaded documents by the Chapter 7 Trustee's counsel has been filed. Dckt. 25, 26, 27, 28, and 29 (Motion to Employ) and Dckt. 98, 99, and 100 (Opposition to the Instant Motion). The Debtor argues that the Trustee's counsel has failed to meet the requirements of 11 U.S.C. § 330.

JULY 23, 2015 HEARING

At the hearing, the court ordered the following:

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to **10:00 a.m. on September 9, 2015, in the Sacramento Division, Department E of this court.**

IT IS FURTHER ORDERED that:

- A. On or before August 10, 2015, Debtor and IMH shall file, notice all creditors and parties in interest, and set for hearing at 10:00 a.m. on

September 9, 2015 at 10:00 a.m.

September 9, 2015, in the Sacramento Division, Department E of this court, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.

- B. On or before August 10, 2015, the Chapter 7 Trustee shall file and serve any motions for payment of administrative expenses by the Debtor as a condition of the dismissal of this case. Such motion shall be set for hearing at 10:00 a.m. on September 9, 2015, in the Sacramento Division, Department E of this court, a motion to approve settlement of Adversary Proceeding and entry of order revoking the discharge entered in this case.

Dckt. 105.

DISCUSSION

11 U.S.C. § 707(a) provides the following:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including--

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521(a), but only on a motion by the United States trustee.

When determining whether a dismissal should be with or without prejudice, 11 U.S.C. § 349 states the following:

(a) Unless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title.

Review of Activity in Case

A review of this case shows that the main parties in both the bankruptcy case and the adversary proceeding have been the Debtor and IMH Financial Corporation. The case was filed on February 24, 2015 and the Debtor received

September 9, 2015 at 10:00 a.m.

his discharge on June 3, 2014. Dckt. 34.

The Trustee performed a Meeting of Creditors on May 1, 2014 which was continued due to Debtor and Debtor's counsel not appearing. The Continued Meeting of Creditors took place on May 29, 2014, where once again Debtor and Debtor's counsel did not appear. The next Continued Meeting of Creditors took place on June 26, 2014, where once again the Debtor and Debtor counsel did not appear. Finally, on July 24, 2014, the continued Meeting was held and concluded and the Trustee issued his Notice of Assets. The only substantive motion filed by the Trustee was the Motion to Employ Trustee's counsel. Dckt. 25. These were the only actions taken by the Trustee as reflected by the case docket.

The remaining matters to arise in the case came from IMH Financial Corporation in the form of Motion for Examination and for Production of Documents (Dckt. 19), Objection to Debtor's Claim of Exemptions (Dckt. 38), Motion to Dismiss Case (Dckt. 44), Objection to Debtor's Claim of Exemptions (Dckt. 54), and Motion to Dismiss the Case (Dckt. 60).

Reviewing the Debtor's schedules, it appears that the Debtor has only two assets which may have value for the estate: (1) 2009 Mercedes Benz 180C (\$17,500.00) and (2) Debtor's interest in Father's Trust (\$10,000.00). (These values are based on the valuations provided by the Debtor.) However, the Trustee does not provide any evidence nor is it apparent from the docket that the Trustee has taken any action in order to liquidate these assets for the benefit of the estate.

It appears that the Trustee does not have in hand the money to pay the administrative expenses incurred in this case. By the Opposition, Debtor seeks to have the case dismissed, recover all of the property of the estate, and not have the administrative expenses due in the voluntary bankruptcy case filed by Debtor.

There being outstanding administrative expenses which cannot now be paid, the motion to dismiss is denied. The Trustee and professionals employed by the Trustee will have to recover and liquidate property of the estate to pay these expenses before the case can be dismissed.

This case has been much more challenging for the Trustee due to the Debtor's conduct in moving assets out of the country. As asserted by IMH,

"Movant asserts that the case should be dismissed based on the following grounds:

A. Debtor demonstrates in his Schedules and Statements that he has only minimal assets in the United States. In Schedule A, Debtors lists that he has no interest in real property. In Schedule B, Debtor claims he owns only \$89,750.00 in personal property, but acknowledges that artwork and furniture valued at \$55,000.00 may be located either in California or at Debtor's address in Germany. Debtor later admitted under oath that the artwork valued at \$45,000.00 is actually located in Germany. Further, since Debtor's California address is listed online as being only 800 square feet, it is plausible that most of the furniture is in Germany, as well. This leaves only \$34,750.00 in personal property in the United States,

consisting of a car valued at \$17,500.00, a trust account with \$10,000.00, a \$5,000.00 watch, and \$1,000.00 in clothing.

B. Debtor's testimony during his Rule 2004 Examination demonstrates that many assets Debtor claimed were in the United States are actually in Germany, leaving de minimus property in the U.S. Debtor further stated that he has 3,800.00 in a German bank account, which is about \$5,100.00, not the \$500.00 as stated on his Schedules. Debtor's testimony also disclosed Debtor's intent to return to Germany after he discharges his debts. Debtor's wife and children still reside in Germany, and Debtor pays rent of about 3,900.00 (\$5,250.00) for his family's residence in Germany, in addition to expenses for that residence. In contrast, Debtor pays \$590 in monthly rent for the 800 square-foot property in Modesto. Additionally, Debtor transferred about \$10,000.00 in funds held by one of his trusts in the United States to Germany and is using those funds for living expenses, all after filing the instant case. Movant alleges that Debtor is merely renting a residence in Modesto to create the facade of eligibility to file bankruptcy here and return to Germany after he has discharged his debt to U.S. creditors."

Civil Minutes, Dckt. 85. This information indicates that this is a significantly complex Chapter 7 case, well beyond the norm.

One of the most basic, and easiest, duties of a bankruptcy debtor and his counsel is to attend the First Meeting of Creditors. All debtors seeking relief under the Bankruptcy Code have a duty to "appear and submit to examination under oath at the meeting of creditors" (11 U.S.C. § 343), to "cooperate with the trustee as necessary" to enable him or her to perform his or her duties as trustee (11 U.S.C. § 521(a)(3)), and to "surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate." 11 U.S.C. § 521(a)(4). See *In re Lebbos*, No. 06-22225-D-7, 2007 WL 2859781, at *3 (Bankr. E.D. Cal. Sept. 24, 2007). The Supreme Court has emphasized its concern with keeping the bankruptcy process moving by insisting on firm, explicit deadlines. See *Taylor v. Freeland & Fronz*, 503 U.S. 638, 644, 112 S.Ct. 1644. "The purpose of the creditors meeting is to question the debtor about his debts, and to examine him about his claimed exemptions. Where more information must be gathered, the meeting can be adjourned to a definite time; there is no limit on the number of adjournments." See *id.*

The failure to attend such a meeting often signals a less than good faith motive in filing a bankruptcy case or in the prosecution of the case. Such failure significantly impacts the credibility of the debtor and the information provided by Debtor under penalty of perjury on the Schedules and Statement of Financial Affairs. Such inaction can cause a trustee to expend otherwise unnecessary time and expense in beginning investigations as to what assets may not have been disclosed or what "game" is afoot in the case.

Though not stated in the Opposition, in Trustee's counsel's declaration it is stated that counsel has incurred fees and costs totaling \$30,460.94 in representing the Trustee. No billing statement, task billing analysis, or other description of what legal services were provided for a \$30,000.00+

attorneys' fee bill in this case.

A review of the Docket in this case does not show pleadings by which the court could see that such fees were "obviously" incurred.

Dismissal of Case and Revocation of Discharge

The Debtor requests that the case be dismissed, and as agreed with IMH, that the discharge be "vacated." Rather than filing a points and authorities, Debtor has improperly conflated the motion with a points and authorities, interspersing extensive citations and quotations with the "grounds" which must be stated with particularity in the motion. Fed. R. Bankr. P. 9014. This makes the "motion" portion much more difficult to read.

In reviewing a request by the debtor to dismiss a Chapter 7 case, the court considers the interests of creditors, as well as that of the Debtor. *Dionne v. Simmons (In re Simmons)*, 200 F.3d 738, 743 (11th Cir.2000). Debtor asserts that creditors will not be prejudiced because they will retain their rights against the Debtor and that Debtor agrees that the discharge in this case may be "vacated." The Chapter 7 Trustee does not expressly address this issue, but does state that of the \$274,370,260 in general unsecured claims, creditors holding \$275,654,059 in general unsecured claims have affirmatively stated that they do not oppose the dismissal. Implicit in this is an indication by the Chapter 7 Trustee that he does not believe that dismissal of this case, with the revocation of the discharge, would not be of prejudice to creditors.

The Bankruptcy Code expressly addresses the effect of a dismissal in 11 U.S.C. § 349(a)(b) provides that, unless the court orders otherwise, automatically:

- (1) reinstates proceedings or custodianships which were superceded under 11 U.S.C. § 543;
- (2) reinstates any transfer avoided under 11 U.S.C. §§ 522, 544, 545, 547, 548, 549, or 724(a), or preserved under 11 U.S.C. §§ 510(c)(2), 522(i)(2), or 551;
- (3) vacates any order, judgment, or transfer ordered under 11 U.S.C. §§ 522(i)(1), 542, 550, or 553; and
- (4) reverts property of the estate in the entity which held it immediately before the commencement of this case.

This Code section does not address any discharge entered in the bankruptcy case.

Once entered, 11 U.S.C. § 727(d) addresses when a discharge may be revoked. On request of the trustee, creditor, or U.S. Trustee, the court shall revoke a discharge if,

- (1) The discharge was obtained through fraud;
- (2) Debtor knowingly and fraudulent failed to report property of the estate to the trustee;

(3) Debtor failed to obey orders of the court to respond to material questions or testify; and

(4) Debtor failed to satisfactorily explain a material misstatement in an audit pursuant to 28 U.S.C. § 586(f), or provide the documents requested for such audit pursuant to 28 U.S.C. § 586(f).

Here, creditor IMH filed a complaint to revoke the Debtor's discharge pursuant to 11 U.S.C. § 727(d). It is alleged that (1) \$45,000 of artwork is located in Germany, (2) \$10,000 of household goods are located in Germany, (3) Debtor's children do not live with him in California, and (4) post-petition Debtor transferred \$10,000 in monies of the estate from an account in the United States to an account in Germany.

It appears that in addition to dismissing the bankruptcy case, Debtor also wants to enter into a stipulation for the dismissal of the Adversary Proceeding, with said stipulation providing that an order be entered revoking Debtor's discharge, with that revocation being without prejudice to the Debtor filing a new bankruptcy case and obtaining a discharge of debts in that new bankruptcy case.

The Motion is denied without prejudice.

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

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

The Motion to Dismiss filed by Scott Myers having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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