

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

October 14, 2015 at 10:00 a.m.

1. 12-38500-E-13 DARLENE GRAY MOTION TO DISMISS CASE
DPC-7 Curt Hennecke 9-16-15 [[138](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 138. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on September 30, 2015. Dckt. 142. The Debtor states that the Motion should be denied because the Debtor will be current by the date of the hearing. The Debtor states that the Debtor mailed a partial payment of \$2,200.00 which was allegedly received by the Trustee on September 25, 2015. The Debtor states that she will make the remaining payments

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by the time of the hearing.

The Debtor argues that she has the financial means of continuing the plan even though she is currently delinquent. The Debtor currently holds two jobs and also receives income from a rental property.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,136.00 delinquent in plan payments, which represents multiple months of the \$4,115.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While the Debtor states that she will be current by the time of the hearing, the Debtor remains delinquent to 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.

2. [13-20501-E-13](#) RAYMOND/CHRISTINE BELCHER MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 9-16-15 [[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 Debtors, Debtor's Attorney, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 68. The Trustee seeks dismissal based on the Debtor's delinquency in plan payments.

DEBTOR'S RESPONSE

The Debtor filed an opposition to the instant Motion on September 30, 2015. Dckt. 72. The Debtor states that the Debtor recently contacted new counsel and intend to file, set and serve an amended plan prior to the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$18,645.00 delinquent in plan payments, which represents multiple months of the \$6,230.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

To date, the Debtor has not filed any evidence that the delinquency has been cured. Under the First Modified Plan Debtor will make 28 additional payments of \$5,750.00. Under the current confirmed Plan Debtor is obligated to make monthly plan payments of \$6,230.00. First Amended Chapter 13 Plan,

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Dckt. 36.

The last payment received from the Trustee was on May 27, 2015. Motion, Dckt. 68, and Declaration, Dckt. 69. The total paid into the plan as of the last payment was \$159,163.00. At the time of filing the Motion to Dismiss, Debtor was in default for the June, July, and August 2015. The proposed First Modified Plan provides that only \$159,163 will be paid into the Plan through September 2015.

The effect of the proposed Modified Plan is that \$24,920.00 (\$6,230.00 x 4 months) which the Debtor previously said was available to fund the plan is not accounted. Even if Debtor suffered some financial shortfalls, it appears highly doubtful that all of the \$24,920.00 went to other emergency or extraordinary expenses. To the contrary, Debtor states that there is at least \$5,720.00 a month to fund a plan. So it appears that there is \$22,880.00 of monies to fund the plan which are unaccounted for by Debtor.

The court has reviewed Debtor's declaration in support of confirmation of the proposed Modified Plan - presuming that it would provide an explanation as to why such substantial defaults had occurred, the use of the monies which were not paid to the Trustee, and why no payments for the months of June, July, August, and September 2015 were fair and in good faith.

The only explanation provided is,

"2. We have had several changes/problems that have arose which now require us to further modify our Chapter 13 Plan. These factors include; Christine's mother died in April 2014, so our income was reduced. Our business is seasonal with the high being in February and the low in July, so we changed our concentration to drought prevention."

Declaration, p. 1:19.5-23.5; Dckt. 77. No information is provided as to why Debtor's had no monies in June, July, August, and September 2015 to fund a plan.

Debtor has filed income and expense updates in support of the Motion to Confirm the proposed Modified Plan. Currently, Debtor states monthly income of \$9,200 a month. Exhibit 1, Dckt. 78. When the court confirmed the First Amended Plan in this case, Debtor reported having monthly income of \$8,116.86. Exhibit B, Dckt. 35. This is not consistent with Debtor's representations that income has dropped - actually, the evidence presented by Debtor show that income has increased by \$1,000.00 per month.

In reviewing expenses, Debtor has increased those by \$364 a month. Compare 2015 expenses, Exhibit 2, Dckt. 78; and Exhibit B, Dckt. 35. The court notes that the changes in expenses include increasing phone, internet, and cable from \$350.00 to \$822.00.

On the income statement, Debtor lists having wage income of \$5,900.00. However, Debtor makes no provision for tax, medicare, or Social Security withholding. Exhibit 1, Dckt. 78. The wages are from Sunrays Harvest, LLC, which Debtor owns. Debtor does not list any tax payments for this income on the expenses. Exhibit 2, Dckt. 78. Debtor has significant tax claims from both the Internal Revenue Service and the California Franchise Tax Board.

Proofs of Claim Nos. 8 and 9. These are for unpaid income taxes.

While Debtor has filed a document titled First Modified Plan and filed a motion to confirm and document titled Declaration in support of such motion, Debtor has failed to address the grounds for the Motion to Dismiss - the substantial defaults in payments. Debtor has failed to provided competent, credible, properly authenticate evidence as to why the defaults occurred, why they are not likely to occur again, and the disposition of the \$24,920.00 not paid into the plan, and the disposition of the \$22,880.00 of what Debtor states is the disposable income to fund the plan for the months of June, July, August, and September 2015.

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

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

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

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

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

3. 15-21001-E-13 JULIE CISNEROS
DPC-1 Christian Younger

MOTION TO DISMISS CASE
9-16-15 [27]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 27.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,086.00 delinquent in plan payments, which represents multiple months of the \$2,162.00 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

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the case is dismissed.

4. [12-33302-E-13](#) GERALD/BARBARA PORTLOCK MOTION TO DISMISS CASE
DPC-1 W. Scott de Bie 9-16-15 [[91](#)]

Final Ruling: No appearance at the October 14, 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.

5. [15-26202-E-13](#) ROSE RODRIGUEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-15 [[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 Rose Rodriguez ("Debtor"), Trustee, and other parties in interest on September 8, 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 (\$79.00 due on September 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: [\$79.00].

This is not Debtor's first, second, or even third bankruptcy case filed since 2011. This is the Debtor's fifth bankruptcy case. Debtor has filed, and had dismissed four prior cases. 11-20656, 11-48686, 12-34894, and 14-27984.

The court shall issue a minute order 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.

6. [15-26202-E-13](#) ROSE RODRIGUEZ
DPC-1 Pro Se

MOTION TO DISMISS CASE
9-15-15 [[22](#)]

Final Ruling: No appearance at the October 14, 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 September 15, 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, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 15, 2015. Dckt. 18. The Trustee objects on the following grounds:

1. Failure to appear at Meeting of Creditors.
2. Failure to provide tax returns.
3. Failure to provide pay advices.
4. Failure to provide business documents.
5. Failure to pay filing fees.
6. Debtor failed to disclose prior cases.
7. The Debtor's plan fails the Chapter 7 liquidation analysis.
8. Debtor failed to provide business income and expense attachment.
9. The Debtor cannot make payments because the Debtor failed to provide evidence as to the rental income and ability of third parties to provide for the additional income.

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10. Debtor failed to file the correct Statement of Current Monthly Income, Official Form B22C.

The Debtor failed to respond to the instant Motion.

The Trustee's grounds are well-taken.

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).

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

The Debtor has failed to timely provide the Trustee with business documents including: questionnaire; tax returns, profit and loss statements, bank account statements; proof of license and insurance or written statement of no such documentation exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). The Debtor also failed to provide the proper Form B22C and failed to provide business income and expense sheet. The Debtor also failed to disclose four prior bankruptcies. Without the Debtor submitting these, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325. These failures raise serious concerns over whether the Debtor is actually providing accurate information as to the Debtor's finances and whether she is prosecuting the case in good faith. This questioning is only further exasperated by Debtor's failure to provide declarations from "wife's mother" and "wife's aunt" as to the reliability of the rental income. The bare-bones of the filing as well as the lack of full disclosure of the Debtor's finances all add to further support dismissal. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee seeks dismissal additionally on the basis that the Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. §1325(a)(4). Trustee states that the Debtor has non-exempt assets of \$166,461.00, with no exemptions listed on Schedule C, while only proposing a 0% dividend to unsecured. This fails the liquidation analysis of 11 U.S.C. § 1325(a)(4) and is an additional ground for dismissal.

Therefore, based on the foregoing, 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. [13-28203-E-13](#) LANCE/LISA MCKINNEY MOTION TO DISMISS CASE
DPC-2 Jason Borg 9-16-15 [76]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 15, 2015. Dckt. 76.

The Debtor has failed to respond to the instant Motion.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,492.90 delinquent in plan payments, which represents multiple months of the \$530.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

\$391.00 for 60 months to pay the \$9,625.00 value portion of the \$18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total \$56,619.00. The \$9,625.00 claim is being paid with 6% interest with a monthly dividend of \$186.00 and a total of \$11,16000 would have been paid at \$186.00 monthly. The Debtor's plan also calls for payment of \$2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to \$11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor. Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of \$14,752.38 which is in excess of the \$11,160.00 called for in the plan. No explanation has been provided for this over disbursement to the car creditor and apparent under disbursement to the creditors holding general unsecured claims.

Debtor asserts that it should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of \$391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.
2. Debtor is currently delinquent in the amount of \$1,173.00.
3. January was month 52. A total of \$20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of \$19,159.00 with last payment of \$391.00 on November 13, 2014.
4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.
5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to allow counsel to meet with his client and determine whether it is in the Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to allow the Debtor to file a proposed modified plan. Dckt. 86.

JUNE 24, 2015 HEARING

At the hearing, the court continued the instant Motion to 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm.

JUNE 30, 2015 HEARING

At the hearing, the court further continued this matter due to deficiencies in the pleadings in the related motion by which Debtor seeks to remedy the default.

Since the continuance, no supplemental papers have been filed in connection to this Motion nor any other.

JULY 21, 2015 HEARING

At the hearing, the court further continued this matter to 3:00 p.m. on August 11, 2015. Dckt. 110. The court further ordered that Debtor's counsel, Michael O'Dowd Hays, appear at the hearing, telephonic appearances permitted. Finally, the court ordered:

IT IS FURTHER ORDERED that on or before August 7, 2015, Debtor shall file a Status Report advising the court, Chapter 13 Trustee, U.S. Trustee, and creditors of how she will prosecute this case, including: (1) whether she is electing to dismiss this case which has been pending for fifty-seven months; (2) if not dismissing, whether Debtor will file a motion to modify the plan; (3) if not dismissing, whether Debtor will file a motion for a hardship discharge; and (3) *Id.* not dismissing, whether Debtor will present evidence to the Trustee that the plan has been completed and a discharge may be entered thereon.

AUGUST 6, 2015 STATUS REPORT

On August 6, 2015, the Debtor filed a Status Report. Dckt. 112. The

Debtor states that she never contemplated the option of electing to voluntarily dismissing her case and is not currently electing to do so. The Debtor, through counsel, states,

"I did not file any further evidence or judicial authority in support of the motion because I had no further evidence from my client and I did not find any case authority supporting the proposition that a below median income debtor be permitted to conclude her case in fewer months than the sixty proposed in her confirmed plan when the substantive requirements of her confirmed plan of her car creditor being paid the amount called for in her plan and her unsecured creditors having been paid 'no less than a 1% dividend' have been met."

Status Report, p. 1:32; Dckt. 112.

Debtor's counsel further states,

- a. "I did not appear on 7/21/15 to address the tentative [sic.] decision as I had nothing further to say that would persuade the Court to rule otherwise." *Id.*, p.2:1-3.
- b. "I will not be filing any further motion to modify the plan." *Id.*, p.2:3-4.
- c. "I have never contemplated filing a motion for a hardship discharge as I don't believe sufficient grounds exist for a hardship discharge." *Id.*, p.2:4-6.
- d. "My argument was that she has paid what was required of her in less time and should be allowed to conclude her case in fewer months than the 60 originally proposed." *Id.*, p.2:12-14.

AUGUST 11, 2015 HEARING

At the hearing, Debtor's counsel reported that he was conferring with other consumer counsel to obtain assistance in addressing the specific circumstances of this case. Due to the case being near the maximum sixty-month term, the Chapter 13 Trustee supported continuing this hearing one last time. The court continued the Motion to 10:00 a.m. on October 14, 2015. Dckt. 116.

DISCUSSION

On October 6, 2015, the court granted the Debtor's Motion for Hardship Discharge.

With a hardship discharge entered for the Debtor, the Trustee's ground for dismissal for plan payment delinquency is moot. Therefore cause does not exist to dismiss the case. The Motion is denied without prejudice.

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

DEBTOR'S RESPONSE

The Debtor filed a response on September 24, 2015. Dckt. 127. The response appears to have been drafted and filed by the Debtor rather than the Debtor's attorney of record, Seth Hanson.

The response states that the Debtor's case be dismissed. The Debtor states that they have experienced financial hardship and it has become difficult to keep up with plan payments.

The Debtor, in addition to requesting that the case be dismissed requests the following:

"Grant us A Release from any associate Wage Garnishments, we ask that All of our Assets, be left Protected."

Dckt. 127.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,389.44 delinquent in plan payments, which represents multiple months of the \$4,536.18 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor's response appears to support dismissal. However, the additional relief requested, which the court reads as a request for the court to not only dismiss the case but also provide an order protecting the Debtor's assets from wage garnishments is not proper. The dismissal of the case "ends" the case, including any automatic stay provisions or other protections that the Bankruptcy Code provides. The court does not dismiss case but provide bankruptcy protections that extend after the dismissal.

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

The additional relief requested by the Debtor is denied and no further relief beyond the dismissal of the case is allowed.

The court shall issue a minute order 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 other or additional relief requested by the Debtor is granted.

10. [14-30704-E-13](#) KEVIN FLOYD
DPC-3 W. Scott de Bie

MOTION TO DISMISS CASE
9-16-15 [[46](#)]

Final Ruling: No appearance at the October 14, 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.

11. [12-25308-E-13](#) RAYMUNDO/SANDRA VALTIERRA MOTION TO DISMISS CASE
DPC-1 Timothy Walsh 9-16-15 [[35](#)]

Final Ruling: No appearance at the October 14, 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.

12. [15-23710](#)-E-13 JENNIFER MUELLER
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-15 [[43](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Jennifer Mueller ("Debtor"), Debtor's attorney, and Trustee on September 10, 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 (\$76.00 due on September 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: [\$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.

13. [13-20612-E-13](#) WANZA RICH
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
9-16-15 [[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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 45. The Trustee seeks dismissal based on the Debtor's delinquency.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on September 30, 2015. Dckt. 50. The Debtor states that a payment was remitted on September 15, 2015 and that the remaining delinquency will be cured by the time of hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$380.00 delinquent in plan payments, which represents multiple months of the \$380.00 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 full delinquency has been cured.

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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.

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

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

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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 continued to 3:00 p.m. on October 27, 2015.

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.

DEBTOR'S OPPOSITION

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.

SEPTEMBER 9, 2015 HEARING

At the hearing, the court continued the hearing to allow the Debtor to file the three objections to claim. Dckt. 106.

DEBTOR'S SUPPLEMENTAL OPPOSITION

The Debtor filed a supplemental opposition on October 5, 2015. Dckt. 107. The Debtor states that the three Objections to Claims have been filed and are set for hearing at 3:00 p.m. on October 27, 2015. The Debtor requests that the instant Motion either be denied or continued to October 27, 2015.

DISCUSSION

A review of the docket shows that three objections have been filed and

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set for hearing for 3:00 p.m. on October 27, 2015.

In light of the instant Motion being interconnected with the Objection to Claims, the court continues the instant Motion to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Objections to Claims.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 3:00 p.m. on October 27, 2015 to be heard in conjunction with the Objections to Claims.

15. [15-21815-E-13](#) SHELLE YOUNGBLOOD
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
9-16-15 [[22](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 22. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on September 30, 2015. Dckt. 26. The Debtor states that the Debtor will be current by the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 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 any evidence that the delinquency has been cured. Debtor offers no explanation as to how she can come up with at least three times the amount of projected disposable income in one month to cure the default. Debtor offers no explanation as to disposition of the plan payment

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monies.

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

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

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

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

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

16. 15-25615-E-13 ANA HENRIQUEZ MOTION TO DISMISS CASE
DPC-1 Timothy McCandless 9-11-15 [[53](#)]

DEBTOR DISMISSED: 9/24/2015

Final Ruling: No appearance at the October 14, 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.

17. [15-26018-E-13](#) AMBER MADRIGAL
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-3-15 [[17](#)]

Final Ruling: No appearance at the October 14, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Amber Madrigal ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 3, 2015. The court computes that 41 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 31, 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.

18. [15-25422-E-13](#) HAROLD/KIMBERLY BROWN
DPC-1 Yasha Rahimzadeh

MOTION TO DISMISS CASE
9-16-15 [[31](#)]

Final Ruling: No appearance at the October 14, 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. [15-25722-E-13](#) JENNIFER JENSEN
DPC-2 Scott J. Sagaria

MOTION TO DISMISS CASE
9-29-15 [[38](#)]

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 September 29, 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. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

Jennifer Lyn Jensen ("Debtor") filed for Chapter 13 relief on July 17, 2015. Dckt. 1.

David Cusick, as Chapter 13 Trustee ("Trustee"), filed this Motion to Dismiss on September 29, 2015. Dckt. 38. Trustee asserts four grounds for dismissal:

1. Debtor failed to appear at the First Meeting of Creditors on August 20, 2015, and continued the meeting to September 17, 2015. The meeting was continued again to October 15, 2015, at 11:00 a.m.

2. Debtor failed to commence plan payments, and is \$6,640.00 delinquent. This represents two months of the \$3,320.00 monthly payments. § 1.01 of the plan requires payment no later than the 25th day of each month.
3. Debtor failed to file tax returns her 2012 tax returns with the Internal Revenue Service.
4. This court sustained Trustee's Objection to Confirmation on September 22, 2015; Debtor has not filed an amended plan and set a confirmation hearing date.

Dckt. 40, ¶¶ 3-6.

DISCUSSION

Trustee first 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).

Next, the Trustee argues that the Debtor did not commence making plan payments and is \$6,640.00 delinquent in plan payments, which represents multiple months of the \$3,320.00 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.

Moreover, Trustee asserts that the IRS's claim shows that the federal income tax return for the 2012 tax year still has not been filed. On review of the court's docket, the IRS's Proof of Claim #3, filed August 20, 2015, shows that a tax return for 2012 was not filed. Proof of Claim 3, p. 3. 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).

Finally, the Trustee's Motion argues that the Debtor did not file an Amended Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 24, 2015. Dckt. 30. 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 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 to Dismiss is granted and the case is dismissed.

20. [13-27223-E-13](#) MIGUEL/SONIA ESCOBAR MOTION TO DISMISS CASE
DPC-5 Peter G. Macaluso 9-16-15 [[57](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

Miguel and Sonia R. Escobar ("Debtor") filed for Chapter 13 relief on May 28, 2013. Dckt. 1.

TRUSTEE'S MOTION TO DISMISS

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on September 16, 2015. Dckt. 57. Trustee declares that Debtor is delinquent \$2,430.00 in plan payments, which represents three months of the plan payments. Dckt. 58.

DEBTOR'S OPPOSITION

Debtor filed opposition on September 30, 2015. Dckt. 62. Debtor briefly asserts that an amended plan will be filed, set, and served before the hearing date, and that the account will be current under the amended plan.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,430.00 delinquent in plan payments, which represents multiple months of the \$810.00 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 create an amended plan is not sufficient to rebut this showing of delinquency.

A proposed modified plan was filed on October 9, 2015. Dckt. 68. The terms provide that the total plan payments through September 2015 are \$21,060.00. The Trustee's Motion to Dismiss states that only \$19,440.00 had been paid, with \$21,060.00 due as of July 21, 2015. As of the September 16, 2015 Motion to Dismiss, Debtor was delinquent \$2,430.00 in plan payments of \$810.00 a month. Debtor was in default for June, July and August 2015. Motion and Declaration, Dckts. 57 and 58.

Debtor's Motion does not provide an explanation as to why the defaults occurred and the use of the June, July, August, and September 2015 payments of \$810.00 each, which total \$3,240.00. Instead, the Motion makes the general statement, "Business has been very slow for the past few months, however we are now beginning to improve by getting new accounts." Motion, p. 1:27.5, 2:1-2; Dckt. 66. No reason is given to believe why or how the finances have changed.

Under the Modified Plan, even though "business has been slow" and it is only "beginning to improve," the proposed Modified Plan would increase the monthly plan payments to \$870.00, even though the Debtor has been unable to make any payments for the months of June, July, August, and September 2015.

While the Motion to Confirm states that the modification is necessary because business has been slow, and the Debtor so testifies (Declaration, Dckt. 69), Debtor offers no current testimony as to actual income. The only information provided is new expense information on Exhibit 1, Dckt. 70. An unsupported income figure of \$5,166.15 is included on the expense exhibit. The court notes that on October 11, 2013, Debtor filed Schedule I stating that he had regularly monthly business income of \$10,506.07. Dckt. 34. (Though this data is stale, it indicates the magnitude of monies moving through Debtor's hands.)

Out of the \$10,506.07 in business income, after payment of expenses (which did not include any taxes), Debtor reported having \$5,166.16 in Net Monthly Income. *Id.* Though Debtor alleges and testifies under penalty of perjury that his income has dropped since business has been slow, he still purports to use the stale \$5,166.16 income number.

The current expense statement filed as Exhibit 1 makes no provision for taxes. Dckt. 70. The stale income information relied upon by Debtor does not provide for paying any income, medicare, or self employment taxes. Dckt. 34.

Debtor has not addressed the defaults in the current Plan. Debtor has

not presented to the court a potential good faith modified plan. Debtor appears to be misrepresenting his expenses.

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

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

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

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

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

21. [15-22025-E-13](#) ROMAN CHAVEZ
DPC-1 David J. Fillerup

MOTION TO DISMISS CASE
9-16-15 [[19](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Roman Fernando Chavez ("Debtor") filed for Chapter 13 relief on March 14, 2015. Dckt. 1.

David Cusick, as Chapter 13 Trustee ("Trustee"), filed this Motion to Dismiss on September 16, 2015. Dckt. 19. Trustee declares that Debtor is \$6,559.60 delinquent, which represents approximately three months of the \$2,014.90 monthly payments.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,559.60 delinquent in plan payments, which represents multiple months of the \$2,014.90 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.

22. [13-33427](#)-E-13 RENE E ESTRADA MOTION TO DISMISS CASE
DPC-2 Rebecca E. Ihejirika 9-16-15 [[32](#)]

Final Ruling: No appearance at the October 14, 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.

23. [13-34027-E-13](#) EILEEN MOFFITT MOTION TO DISMISS CASE
DPC-2 Joseph M. Canning 9-16-15 [[67](#)]

Final Ruling: No appearance at the October 14, 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 (*pro se*) and Office of the United States Trustee on September 29, 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. At the hearing -----
-----.

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

Guadalupe Martinez ("Debtor") filed *pro se* for Chapter 13 relief on August 10, 2015. Dckt. 1.

David Cusick, as Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 29, 2015. Dckt. 29. Trustee asserts five grounds for dismissal:

1. Debtor failed to provide Trustee with a tax transcript, copy of Federal Income Tax Return, or written statement that no such documents exist for 2013 and 2014 filing years.

2. Debtor failed to provide Trustee with pay stubs from the 60 days prior to filing.
3. Debtor's projected monthly disposable income listed on Schedule J reflects a negative \$1,700.00. Debtor's Plan § 1.01 proposes a monthly payment of \$111.00 per month. Also, at the First Meeting of Creditors held on September 17, 2015, Debtor admitted to not having her prior job at Growing Hearts; Debtor claimed to have new employment, but has not listed the new income on Schedule I.
4. Debtor failed to commence plan payments, and is delinquent \$111.00, which represents 1 month of the \$111.00 plan payments.
5. Debtor failed to file the Credit Counseling Certificate needed under § 109(h).

DISCUSSION

Trustee's objections are well-taken.

To the Trustee's first and second objection, 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).

Third, Debtor has not filed a schedule of current income and current expenditures. Trustee asserts that Debtor's Schedules I and J are not current as they do not reflect Debtor's current income. Dckt. 31 ¶ 5, 6. Debtor has failed to file the documents required under 11 U.S.C. § 521.

Fourth, Trustee argues that Debtor did not commence making plan payments and is \$111.00 delinquent in plan payments, which represents one month of the \$111.00 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.

Finally, Trustee argues that Debtor failed to file a Certificate of Credit Counseling. An individual debtor is required to file a Certificate of Credit Counseling under 11 U.S.C. 521(b)(1). Debtor failed to file this required certificate. This is an additional ground to dismiss the case.

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

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

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

October 14, 2015 at 10:00 a.m.

is delinquent by \$1,650.00, which represents three months of the \$550.00 plan payments. Dckt. 57 ¶ 3.

Debtor filed an opposition on September 17, 2015. Dckt. 59. Debtor alleges she fell behind in her monthly payments because she lost her job in May 2015, but has since gained full time employment. To cure the delinquency, Debtor claims she will file a modified Chapter 13 Plan with Motion to Confirm before the hearing date. No declaration or other evidence was filed to support the contentions argued in the Opposition.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,650.00 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).

To date, there is no Motion to Confirm or pending plan filed by the Debtor.

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

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

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

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

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

26. [13-27133-E-13](#) ROBERT/MARJORIE DUSSAULT MOTION TO DISMISS CASE
DPC-1 Scott A. CoBen 9-16-15 [[34](#)]

Final Ruling: No appearance at the October 14, 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.

27. [12-22934-E-13](#) SHAWNA SMITH
DPC-1
WITHDRAWN BY M. P.

MOTION TO DISMISS CASE
9-16-15 [[59](#)]

Final Ruling: No appearance at the October 14, 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.

28. [13-20034-E-13](#) MARIANNA BATTISTE
DPC-6 Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
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 - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on 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). The defaults of the non-responding parties and other parties in interest are entered.

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

David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss on August 10, 2015. Dckt. 46. The Trustee sought dismissal on the grounds that Marianna Battiste ("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.

SEPTEMBER 9, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on October 14, 2015. Dckt. 54. This court ordered:

Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental evidence and supporting pleadings concerning

the source of the monies to cure the default, the reason for the default, and why ability [sic] of the Debtor pay the additional sums of money to cure the default and pay the current plan payment is unique only to the month in which the cure payment was made.

Id.

DEBTOR'S SUPPLEMENTAL EXHIBIT AND DECLARATION

Debtor filed a supplemental Exhibit #1 and Declaration of Marianna Battiste on September 22, 2015. Dckt. 55, 56.

Debtor's Exhibit #1 is a document labeled "Trustee's website print out of payments received dated 9/22/2015." Dckt. 55. FN1. The website print out shows that \$55,800.00 has been paid into the plan through September 22, 2015.

FN.1.

The Battiste Declaration seeks to introduce evidence establishing the amount of payments sent to Trustee. However, the document titled "Trustee's website print out of payments received dated 9/22/2015" is not properly authenticated. Fed. R. Evid. 901, 902.

Further, Debtor did not provide the court with a basis for determining that Exhibit #1's out of court statement is admissible hearsay. Fed. R. Evid. 802, 803.

However, because Trustee admits that the delinquencies through September 22, 2015 have been cured, and based on the unusual circumstances of this case, the court will *sua sponte* waive the evidentiary defects of Exhibit #1.

Debtor's Declaration asserts that Debtor is current on the plan. The reason for falling behind on payments was due to Debtor taking a temporary position with Teamsters Local 210; Debtor is paid by the Union, who mails out pay checks which are delayed.

Also, Debtor's car required \$8,000.00 in repairs, which still has not been fixed. Debtor claims to have another mechanic who will provide discounted services to repair the car. In the interim, Debtor has been renting a car to get to work.

Finally, Debtor claims to have "gone through several hardship [sic] and I am hopeful that my situation will get better. Once I get back to my regular job within three months things will settle down."

Dckt. 56 ¶ 2-4.

TRUSTEE'S SUPPLEMENTAL RESPONSE

Trustee filed a response on October 5, 2015. FN2.

FN.2. Trustee acknowledges that this response is late. This court *sua sponte*

waives the LBR 9014(f)(1)(C) defect due to the unusual circumstances of this case.

Trustee asserts several points in reply to Debtor's supplemental evidence:

1. Debtor is current with her plan payments through August 25, 2015. Debtor has paid a total of \$5,400.00 between August 28th and September 9th. However, Debtor is now delinquent \$1,800.00 as another payment of \$1,800.00 came due on September 25, 2015.
2. Debtor has not provided evidence of income from the Union or why there was a delay in being paid. Debtor's evidence of the temporary job with Teamsters Local 210 is not sufficient.
3. Debtor's claims of several hardships and of hoping to getting her regular job back are not supported by evidence. Debtor presented no evidence of what Debtor's current income is, or why returning to her regular job is expected to happen in three months.
4. Debtor's claim that \$8,000.00 worth of car repairs have been performed on her vehicle, and that her vehicle needs more repairs, are not supported by evidence.
5. Debtor failed to present sufficient evidence describing why renting a car while her other vehicle is being repaired was required. Debtor's Schedule B lists two vehicles, and Debtor's supplemental Declaration does not provide evidence on which vehicle is being repaired. Debtor's Schedule I states the Debtor is "Single" and lists no dependents. The Statement of Financial Affairs question #16 "Spouses and Former Spouses" is marked "none." No evidence is presented why Debtor's second vehicle cannot be used, and why renting the new vehicle is necessary.

Dckt. 58 ¶ 1-3.

DISCUSSION

Trustee's objections are well-taken. Debtor's supplemental evidence does not cure the deficiencies noted by this court's October 14, 2015 Civil Minute Order.

Debtor's Exhibit #1 is only evidence that Debtor is current as of September 22, 2015. Trustee notes that another payment of \$1,800.00 came due on September 25, 2015. No evidence has been presented to show Debtor paid the September 25, 2015 payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Also, Debtor provided little evidence on where the funds to become current came from. Debtor's declaration states that Debtor is paid by the Union, but fails to provide when payments were made, how much Debtor was paid,

and the reason for the Union's delays in payments. In addition, Debtor merely alleges that she is experiencing "several hardships" which she hopes will get better, but provides no details on what those hardships are or what impact they had on Debtor's finances. Debtor's statements are not sufficient to explain why Debtor defaulted on her prior plan payments.

Further, Debtor failed to provide sufficient evidence on why her ability to cure the deficiency through September 22, 2015, was the product of unique circumstances. If anything, Debtor's Declaration shows that her circumstances are deteriorating due to the \$8,000.00 in repairs to one of her two cars, the "several hardships" that have an untold effect on Debtor's finances, and the delayed payments from her Union job. Thus, Debtor failed to present evidence that describes where the money to cure the delinquency through September 22, 2015, came from or why the unique circumstances will not affect future payments to the plan.

The \$8,000.00 in vehicle repairs, plus more to follow, raises another financial issue. Debtor does not identify the car for which the repairs have been, and are to be, made at additional expense. Presumably, it is the 2006 Chevrolet Trailblazer which had 126,000 miles at the commencement of the case and had a value of \$4,000.00. Schedule B, Dckt. 1. This vehicle secured a debt of \$10,000.00 as of the commencement of the case. Schedule D, *Id.* Debtor succeeded in having the creditor's secured claim valued at \$4,000.00. Order, Dckt. 23. Debtor's Chapter 13 Plan provides for paying this \$4,000.00 claim, with 4% interest, amortized over the sixty months of the confirmed Plan. Chapter 13 Plan, Dckt. 5. Debtor made only about 18 months of payments on the secured claim.

Thus, it appears that Debtor has spent \$8,000.00 on a vehicle with no equity. Debtor has not proceeded in this case alone, but has been represented by counsel. No explanation is provided for why Debtor has exhausted \$8,000.00 in monies in a worthless vehicle, chose to do so and default in the plan payments, and how Debtor has demonstrated the defaults will not continue. Further, Debtor does not show how a feasible plan can be proposed, confirmed, and then performed by Debtor.

Debtor having failed to present sufficient evidence, cause exists to dismiss the case. The Motion to Dismiss is granted and the case will be dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (Pro Se) and Office of the United States Trustee on September 2, 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 2, 2015. Dckt. 28. The Trustee seeks dismissal on the following grounds:

1. Debtor has failed to make plan payments;
2. Debtor failed to appear at the first Meeting of Creditors;
3. Debtor failed to provide pay advices to the Trustee; and
4. Debtor failed to provide tax returns to the Trustee.

DEBTOR'S RESPONSE

On September 30, 2015, the Debtor filed a response to the instant Motion. Dckt. 39. The Debtor states that he missed the appointment (the court assumes the Debtor means the Meeting of Creditors) due to his mailbox being vandalized, delaying his mail.

DISCUSSION

The Trustee's grounds for dismissal are well-taken. While the Debtor's response addresses the Trustee's argument that dismissal is proper due to the Debtor's failure to attend the Meeting of Creditors, the other grounds addressed in the Motion support dismissal.

The Trustee argues that the Debtor did not commence making plan payments and is \$85.00 delinquent in plan payments, which represents multiple months of the \$85.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Debtor has 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).

At the October 6, 2015 hearing, the court denied confirmation of Debtor's Chapter 13 Plan. Civil Minutes, Dckt. 44.

Therefore, even though the Debtor has a valid reason for not receiving notice of the Meeting of Creditors, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 21. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

PETER MACALUSO'S OPPOSITION

Peter Macaluso filed an opposition on behalf of the Debtor and Debtor's attorney of record, C. Anthony Hughes, on September 30, 2015. Dckt. 25. Mr. Macaluso states that he submitted a Substitution of Attorney to the Debtor on September 23, 2015. Mr. Macaluso states that Debtor remitted a payment on September 23, 2015 to the Trustee in the amount of \$1,862. Mr. Macaluso states that the Debtor will either be current by the time of the hearing or will have filed a modified plan.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,422.00 delinquent in plan payments, which represents multiple months of the \$951.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the docket shows that the Debtor has not filed a proposed an amended plan or provided additional evidence of the delinquency cure.

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.

31. [15-21839](#)-E-13 ROBERT REED AND MARIA MOTION TO DISMISS CASE
DPC-2 BARTLOW-REED 9-15-15 [[39](#)]
Peter Macaluso

Final Ruling: No appearance at the October 14, 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.

32. [13-20942-E-13](#) JOHNNY SEZA
DPC-2 Robert Fong

MOTION TO DISMISS CASE
9-16-15 [[32](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 32.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$275.00 delinquent in plan payments, which represents multiple months of the \$140.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, the court notes that on September 2, 2015, Debtor's counsel filed a Notice of Death of Debtor stating that the Debtor passed away on July 4, 2015. No pending Motion to Substitute a Personal Representative has been filed.

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

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

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

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

and good cause appearing,

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

33. [15-23042-E-13](#) ROOSEVELT/DIANE JAMES MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 9-16-15 [[22](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 22. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on September 30, 2015. Dckt. 26. The Debtor states that they will be current by the time of the hearing.

DISCUSSION

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

is \$460.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has offered no evidence that they have, in fact, cured the delinquency.

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

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

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

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

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

34. [14-24643](#)-E-13 LAQUETA MARTIN MOTION TO DISMISS CASE
DPC-4 Susan Dodds 9-16-15 [[53](#)]

Final Ruling: No appearance at the October 14, 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.

35. [12-20844](#)-E-13 AARON/JENNIFER PRUITT CONTINUED MOTION TO DISMISS
DPC-4 Mark Wolff CASE
7-31-15 [[52](#)]

Final Ruling: No appearance at the October 14, 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.

36. [14-27045-E-13](#) HARINDER SINGH
DPC-2 David Alden

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

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on 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 Motion to Dismiss to 10:00 a.m. on November 4, 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.

SEPTEMBER 9, 2015 HEARING

At the hearing, the Motion was continued to 10:00 a.m. on October 14, 2015 in light of the Debtor filing a Motion to Approve a Compromise.

DISCUSSION

October 14, 2015 at 10:00 a.m.

No supplemental papers have been filed in connection with the instant Motion.

On October 6, 2015, the court denied without prejudice the Motion to Approve a Compromise was denied without prejudice. Dckt. 116.

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.

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.

Therefore, the Motion is continued to 10:00 a.m. on November 4, 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 November 4, 2015.

37. [14-32345-E-13](#) BARBARA GIAMMARCO
DPC-2 Lucas Garcia

MOTION TO DISMISS CASE
9-16-15 [[40](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 40. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

DEBTOR'S NON-OPPOSITION

The Debtor filed a non-opposition to the instant Motion on September 30, 2015. Dckt. 44. The Debtor states that the Debtor has experienced an unforeseen medical expense that made plan payments impossible. The Debtor states that she plans on filing a new case rather than seeking a modification due to the fact that a modification would require a tighter and more difficult budget.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,800.00 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).

Therefore, in light of the delinquency and the non-opposition of the Debtor, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

38. 15-25445-E-13 GUADALUPE GONZALEZ MOTION TO DISMISS CASE
DPC-2 Julius Engel 9-29-15 [40]

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 September 29, 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. At the hearing -----
-----.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 29, 2015.

The Trustee argues that the Debtor did not commence making plan payments and is \$302.00 delinquent in plan payments, which represents multiple months of the \$151.00 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 also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 22, 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).

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

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

The Debtor has not filed an opposition to the instant Motion.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 67. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

DEBTOR'S RESPONSE

The Debtor filed a response on September 30, 2015. Dckt. 72. The Debtor states that the Debtor sent the Trustee a payment of \$1,402.00 on September 22, 2015. The Debtor states that he has been able to get additional roofing jobs and will be able to cure the delinquency.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,804.00 delinquent in plan payments, which represents multiple months of the \$1,402.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided evidence that the remaining delinquency has

been cured.

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.

40. [12-27946](#)-E-13 CHUCK/WENDY STIEDE CONTINUED MOTION TO DISMISS
DPC-6 Scott Johnson CASE
7-31-15 [[129](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The 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. Chuck and Wendy Stiede ("Debtor") did not file an opposition.

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

SEPTEMBER 19, 2015 HEARING

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

DEBTOR'S SUPPLEMENTAL DECLARATION

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

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

Dckt. 137, ¶ 3-6.

TRUSTEE'S RESPONSE

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

1. Debtor is current through September 23, 2015. However, on September 25, 2015, a payment for \$1,900.00 came due, and has not been paid. Thus, Debtor is still

delinquent;

2. Debtor's Declaration fails to sufficiently explain how much Debtor was paid for Debtor Wendy Stiede's additional hours, how many hours Wendy received, or when those hours were received and when they ended;
3. Debtor failed to present sufficient evidence to demonstrate how the Debtors were able to make \$3,100.00 in repair payments, plus the \$5,700.00 payment to cure the delinquency, on Debtor's additional hours;
4. Debtor's Declaration fails to provide sufficient information on how much money was diverted to the family and personal issues, and whether those issues caused the Debtors to hold onto the funds, and if so where those funds were kept.

DISCUSSION

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

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

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

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

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

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

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

41. [15-22747-E-13](#) GARY/VICTORIA TEDFORD MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 9-16-15 [[39](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 39.

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 August 11, 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 has failed to file any response to the instant Motion.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

42. [15-22250-E-13](#) PAULINE SIME MOTION TO DISMISS CASE
DPC-1 Mohammad Mokarram 9-16-15 [[17](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 17.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,320.00 delinquent in plan payments, which represents multiple months of the \$440.00 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.

43. 15-24150-E-13 TAEVONA MONTGOMERY MOTION TO DISMISS CASE
DPC-2 Seth Hanson 9-16-15 [[38](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 38.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,600.00 delinquent in plan payments, which represents multiple months of the \$4,300.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

44. [13-24353-E-13](#) WALTER LARSON
DPC-1 Michael Croddy

MOTION TO DISMISS CASE
9-16-15 [[26](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 26.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,122.00 delinquent in plan payments, which represents multiple months of the \$1,061.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

45. [12-39954-E-13](#) JOHN/MICHELLE PINEDA MOTION TO DISMISS CASE
DPC-1 Peter Cianchetta 9-16-15 [[36](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 36.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,153.57 delinquent in plan payments, which represents multiple months of the \$2,653.29 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the

October 14, 2015 at 10:00 a.m.

- Page 70 of 121 -

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

Continued from 9/9/15

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*), Creditors, Chapter 13 Trustee, 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. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

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, 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, 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.

SEPTEMBER 9, 2015 HEARING

At the hearing, the court continued the motion until October 14, 2015. Dckt. 72, 76.

TRUSTEE'S STATUS REPORT

Trustee filed a Status Report on September 29, 2015. Dckt. 78. Trustee declares:

1. Debtor appeared at the continued § 341 Meeting.
2. Debtor failed to file a Motion to Confirm the April 29, 2015 Plan, or to serve a new Plan and Motion to Confirm.
3. Debtor's April 29, 2015 Plan also has several errors:

- a. the priority claim of Lassen County Recovery, filed as Proof of Claim #2, is not provided for in the plan;
- b. The claim of Greer Towner Revocable Trust, filed as Proof of Claim #5, is not provided for in the plan;
- c. No dividend is provided to unsecured creditors;
- d. Debtor's amended Schedule J, filed August 20, 2015, made significant changes to the budget without an explanation;
- e. Debtor's current projected disposable income, listed in Schedule J, reflects \$388.00, but the plan only provides for payments of \$100.00;
- f. The Schedule J filed June 23, 2015, reflects an income of \$2,614.00, while the most recent Schedule J, filed August 20, 2015, reflects income of \$4,317.00.

Dckt. 79 ¶ 3-6.

DISCUSSION

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

Trustee declares that Debtor appeared at the continued § 341 Meeting of Creditors. Thus, this defect was cured.

The Trustee's Motion argues that the Debtor did not file a Motion to Confirm the April 29, 2015 Plan. A review of the docket shows that Debtor has not yet filed a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

As further evidence of prejudicial delay, Trustee notes several defects in Debtor's plan that would prevent confirmation, such as failure to provide for two creditors, failure to provide for unsecured creditors, and discrepancies in Debtor's reported disposable income. Dckt. 37, 47, 64-66. Debtor has not filed any supplemental papers to cure or explain these discrepancies.

Debtor has prosecuted this case in pro se. This is not Debtor's first case. Debtor Loran Elve commenced a Chapter 13 case, represented by counsel, on January 6, 2015. 15-20063. That case was dismissed on February 4, 2015, for failure of Debtor to file the Schedules, Statement of Financial Affairs, and Chapter 13 Plan.

Therefore, because Debtor is delinquent, has not cured the discrepancies in the April 29, 2015 Plan, and has not filed a Motion to Confirm the April 29, 2015 Plan or filed a new plan and set a hearing to confirm, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

holding that:

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

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

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

47. 13-26157-E-13 JOEL JORDAN MOTION TO DISMISS CASE
DPC-3 Paul Bains 9-16-15 [76]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 76. The Trustee seeks dismissal due to Debtor's delinquency in plan payment.

DEBTOR'S RESPONSE

The Debtor filed a response on September 29, 2015. Dckt. 80. The Debtor states that he missed two payments, once in January 2015 and the other in August 2015. The Debtor's daughter, Karla Santos, has been helping the Debtor procure the money orders and sending them to the Trustee. Debtor's wife had to undergo surgery and during that time Debtor's daughter was traveling for work and not around to assist the Debtor in procuring the money orders and sending them. The payments during this time remained with the Debtor except for a portion which was used for expenses relating to Debtor's wife's recovery.

The Debtor states that his daughter is going to gift the Debtor \$300.00 to cover the amount used to assist the Debtor's wife. This will be in addition to the amount the Debtor's daughter is already assisting him with her month. See Declaration of Karla Santos, Dckt. 14 and 82. The Debtor also states that the Debtor's son will assist with getting the money orders and sending them to the Trustee in time.

The Debtor states that he will be current by the time of the hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,300.00 delinquent in plan payments, which represents multiple months of the \$1,650.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While the Debtor provides an explanation for the delinquency and his plan to ensure it does not happen again, the fact remains that the Debtor remains delinquent. The Debtor has not provided any evidence that the two months of 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.

48. [15-25257](#)-E-13 MEGAN CARR
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-3-15 [[23](#)]

Final Ruling: No appearance at the October 14, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Megan Carr ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 3, 2015. The court computes that 41 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 31, 2015).

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

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

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

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

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

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

49. [12-37960-E-7](#) KRIS GASKELL MOTION TO DISMISS CASE
DPC-2 Mohammad Mokarram 9-16-15 [[60](#)]

Final Ruling: No appearance at the October 14, 2015 hearing is required.

The case having previously been converted to a Chapter 7 case on September 28, 2015 (Dckt. 67), 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 converted, 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 converted.

50. [15-23662-E-13](#) JUAN FLORES ORDER TO SHOW CAUSE - FAILURE
Marc Caraska TO PAY FEES
9-8-15 [[72](#)]

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

51. [13-28763-E-13](#) NADINE ADKINS
DPC-2 Scott Johnson

MOTION TO DISMISS CASE
9-16-15 [[55](#)]

Final Ruling: No appearance at the October 14, 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. [11-34064-E-13](#) KIMBERLY/AARON BRUCE
DPC-8 Seth Hanson

MOTION TO DISMISS CASE
9-16-15 [[63](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 September 16, 2015. Dckt. 63.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,100.00 delinquent in plan payments, which represents multiple months of the \$1,400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

53. [13-27864-E-13](#) KIM/KERI WONG
DPC-2 Scott Johnson

MOTION TO DISMISS CASE
9-16-15 [[51](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 51. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on September 17, 2015. Dckt. 55. The Debtor states that they intend to be current by the time of hearing. The Debtor states that the cause of the delinquency was due to unanticipated expenses with their water heater and vehicle.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,600.00 delinquent in plan payments, which represents multiple months of

the \$1,700.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to provide evidence that the Debtor has cured the delinquency nor has the Debtor filed a proposed modified 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.

54. [13-32465](#)-E-13 JUSTIN/AMBER GAMAYO MOTION TO DISMISS CASE
DPC-1 Mark Wolff 9-16-15 [[26](#)]

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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 16, 2015. Dckt. 26.

DEBTOR'S OPPOSITION

The Debtor filed an opposition to the instant Motion on September 30, 2015. Dckt. 30. The Debtor states that they intend to be current by the time of the hearing. The Debtor states that the Debtor have paid two payments of \$295.00 in September 2015 and that they intend to make an additional payment of \$295.00 on or about October 9, 2015.

The Debtor state that they fell behind due to the time of their vacation pay.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$590.00 delinquent in plan payments, which represents multiple months of the \$295.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor's opposition provides evidence that the delinquency has been partially cured but the Debtor remains 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.

55. [15-24065](#)-E-13 MAURICE CARR
DPC-3 Pro Se

MOTION TO DISMISS CASE
9-15-15 [[47](#)]

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 15, 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 continue the Motion to Dismiss to 10:00 a.m. on November 4, 2015.

Maurice Carr ("Debtor") filed *pro se* for Chapter 13 relief on May 19, 2015. Dckt. 1.

TRUSTEE'S MOTION TO DISMISS

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 15, 2015. Dckt. 47. Trustee asserts two grounds for dismissal:

1. Debtor failed to file a tax transcript, copy of Federal Income Tax Return, or a written statement that no such documentation exists. While Debtor stated in his Motion to Confirm that he is not required to file tax returns since 2012, Trustee's Response requested the 2012 return; this return has not been received by the Trustee.
2. Debtor is \$199.00 delinquent in plan payments, which represents multiple months of Debtor's \$90.00 monthly payments due.

Dckt. 49 ¶ 3(a, b).

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 22, 2015. Dckt. 51. Debtor declares, under penalty of perjury, that Debtor is receiving military disability benefits, has been offered gainful employment, and is living at home and does not intend to surrender the property. Dckt. 52 ¶ 3, 4, 7. Further, Debtor has "decided to extend the length of my plan to 60 months which will

allow my payments to be lower and allow me time pay [sic] more into the plan." *Id.* at ¶ 6.

TRUSTEE'S RESPONSE

Trustee filed a response on September 30, 2015. Dckt. 60. Trustee asserts the following:

1. Trustee has received various tax documents, but has yet to receive a copy of the 2012 tax return or a complete tax return transcript for the 2012 tax year.
2. Trustee received a payment of \$200.00 on September 21, 2015. However, Debtor is still delinquent \$169.00 under the filed September 22, 2015 Amended Plan, which calls for payments of \$110.00 per month; the prior, unconfirmed August 10, 2015 plan calls for payments of \$90.00 per month.

Trustee now requests the Motion to Dismiss be continued to November 4, 2015, at 10:00 a.m. to allow Debtor more time to address the Trustee's concerns and set a Motion to Confirm hearing for the September 22, 2015 Amended Plan.

DISCUSSION

The court will grant Trustee's request to continue the hearing. Debtor has until November 4, 2015 at 10:00 a.m. to cure the deficiencies raised by Trustee.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on November 4, 2015.

56. [10-43569-E-13](#) SANDRA ROBERTS MOTION TO DISMISS CASE
DPC-4 9-16-15 [[60](#)]

Final Ruling: No appearance at the October 14, 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.

57. [15-23769-E-13](#) COREY LEE COLEMAN MOTION TO DISMISS CASE
DPC-1 Peter L. Cianchetta 9-15-15 [[34](#)]
WITHDRAW BY M. P.

Final Ruling: No appearance at the October 14, 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.

58. [14-28170-E-13](#) BARBARA WALTERS MOTION TO DISMISS CASE
DPC-1 Stephen N. Murphy 9-16-15 [[33](#)]

Final Ruling: No appearance at the October 14, 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.

59. [15-23674-E-13](#) RALPH CROSBY ORDER TO SHOW CAUSE - FAILURE
Michael O'Dowd Hays TO PAY FEES
9-8-15 [[40](#)]

DEBTOR DISMISSED: 9/17/15

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

60. [15-25376-E-13](#) PATRICIA HEUSTESS ORDER TO SHOW CAUSE - FAILURE
Pro se TO PAY FEES
9-9-15 [[29](#)]

DEBTOR DISMISSED: 9/17/15

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

61. [14-30278-E-13](#) GARY SHREVES AND KAREN MOTION TO DISMISS CASE
DPC-2 BAYSINGER- SHREVES 9-16-15 [[98](#)]
Mark A. Wolff

Final Ruling: No appearance at the October 14, 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.

62. [12-24180-E-13](#) JOJIE GOOSELAW
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
9-24-15 [[160](#)]

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 September 24, 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. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

Jojie Domines Gooselaw ("Debtor") filed for Chapter 13 relief on march 1, 2012. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 24, 2015. Dckt. 160. Trustee asserts that Debtor is delinquent \$2,150.00, owed to the California Franchise Tax Board who has also filed a Motion to Dismiss. Dckt. 156; Dckt. 162 ¶ 3, 4.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,150.00 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 Debtor has failed to file a response to the instant Motion.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

Jesus Crispin Cardenas, Sr. and Jessica Desiree Cardenas ("Debtor") filed for Chapter 13 relief on January 1, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 54. Trustee asserts that Debtor is delinquent \$6,535.00, which represents multiple months of Debtor's \$4,535.00 monthly payment. Dckt. 56 ¶ 3.

Debtor filed a response September 30, 2015. Dckt. 58. Debtor merely alleges that a payment of \$1,200.00 was mailed on September 28, 2015, and a second payment of \$1,900.00 was mailed on September 29, 2015. Debtor also claims the account will be current by the hearing. No evidence has been presented to substantiate these claims.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,535.00 delinquent in plan payments, which represents multiple months of the \$4,535.00 plan payment. Even taking Debtor's allegations as true, the account is still delinquent by \$3,435.00; a promise to pay does not cure the

delinquency. 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.

Final Ruling: No appearance at the October 14, 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 September 11, 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.

Henry Harrison Smart ("Debtor") filed for Chapter 13 relief on May 20, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 11, 2015. Dckt. 21. Trustee asserts the following grounds for dismissal:

1. Debtor is delinquent \$2,770.00, which is multiple months of the \$1,385.00 plan payments. § 1.01 of Debtor's Plan calls for payments to be received no later than the 25th day of each month.
2. The Objections to Confirmation, filed by Trustee and Ronald P. Elvidge, were both sustained by the court on August 11, 2015. Dckt. 50, 51. Debtor has not filed an Amended Plan or set the plan for confirmation.

Trustee's objections are well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,770.00 delinquent in plan payments, which represents multiple months of the \$1,385.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Further, 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 August 17, 2015. Dckt. 50, 51. 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 has failed to file a response to the instant Motion.

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

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

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

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

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

65. [15-26180](#)-E-13 MYRNA MCDONALD
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-15 [[15](#)]

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 Myrna McDonald ("Debtor"), Trustee, and other parties in interest on September 8, 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 (\$79.00 due on September 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.

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 September 10, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

Myrna Marie McDonald ("Debtor") filed for Chapter 13 relief on August 3, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 11, 2015. Dckt. 21. Trustee asserts the following grounds for dismissal:

1. Debtor failed to appear at the First Meeting of Creditors held on September 3, 2015; the meeting has been continued to October 29, 2015, at 11:00 a.m.
2. Debtor failed to provide Trustee with paystubs for the 60 days preceding filing their bankruptcy.
3. Debtor failed to provide Trustee with a tax transcript, copy of Federal Income Tax Return, or a written statement that no such documents exist for the 2014 tax year.
4. Debtor failed to file the tax return for the Franchise Tax Board, as shown in Proof of Claim #2.

Dckt. 23 ¶¶ 3-6.

Trustee's objections are well-taken.

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).

Trustee's second and third objections are that 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).

Finally, Trustee's fourth objection is that Debtor has not filed a Federal Income Tax Return for the 2014 tax year. 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).

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. [12-39681](#)-E-13 ROBERT RHYMES
DPC-2 Peter G. Macaluso

MOTION TO DISMISS CASE
9-16-15 [[44](#)]

Final Ruling: No appearance at the October 14, 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.

68. [15-21683-E-13](#) JOHN HATTEN
DPC-1 Matthew R. Eason

MOTION TO DISMISS CASE
9-16-15 [[17](#)]

Final Ruling: No appearance at the October 1, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

John Randy Hatten ("Debtor") filed for Chapter 13 relief on March 3, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 17. Trustee declares that Debtor is delinquent by \$3,726.55, which represents multiple months of Debtor's \$1,908.85 payment. Dckt. 19 ¶ 3.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,726.55 delinquent in plan payments, which represents multiple months of the \$1,908.85 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

October 14, 2015 at 10:00 a.m.

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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.

69. 11-22884-E-13 WENDEL/MARY APPERT MOTION TO DISMISS CASE
DPC-3 W. Steven Shumway 9-16-15 [[103](#)]

Final Ruling: No appearance at the October 14, 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.

70. [14-32084-E-13](#) STEVEN/SHARON COLLINS
DPC-3 Gary Ray Fraley

MOTION TO DISMISS CASE
9-16-15 [[59](#)]

Final Ruling: No appearance at the October 14, 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. [15-24584-E-13](#) ALEKSANDR TYSHKEVICH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-15 [[43](#)]

DEBTOR DISMISSED: 9/17/15

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

72. [11-29785-E-13](#) JAMES PRICE
DPC-10 Joseph M. Canning

MOTION TO DISMISS CASE
9-16-15 [[87](#)]

Final Ruling: No appearance at the October 14, 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.

73. [14-29688-E-13](#) MARVIN/DARYL GARDNER
DPC-2 Julius M. Engel

MOTION TO DISMISS CASE
9-16-15 [[46](#)]

Final Ruling: No appearance at the October 14, 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.

74. [12-37390-E-13](#) STACY MORRISON
DPC-3 Peter G. Macaluso

MOTION TO DISMISS CASE
9-16-15 [[69](#)]

Final Ruling: No appearance at the October 14, 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. [10-52593-E-13](#) LEON/SIERRA RENDON
DPC-1 Pro Se

MOTION TO DISMISS CASE
9-16-15 [[134](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

Leon Michael Rendon, Jr., and Sierra Jolie Rendon ("Debtor") filed for Chapter 13 relief on December 14, 2010. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 134. Trustee declares that Debtor is delinquent by \$5,455.55, which represents multiple months of Debtor's \$3,090.94 plan payments.

Trustee's objections are well-taken.

Trustee seeks dismissal of the case on the basis that the Debtor is \$5,455.55 delinquent in plan payments, which represents multiple months of the \$3,090.94 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.

76. [15-21293-E-13](#) GARY BITTERS MOTION TO DISMISS CASE
DPC-3 Scott J. Sagaria 9-15-15 [[56](#)]

Final Ruling: No appearance at the October 14, 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 September 15, 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.

Gary Michael Bitters ("Debtor") filed for Chapter 13 relief on February 20, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 15, 2015. Dckt. 56. Trustee asserts two grounds for dismissal:

1. Debtor is delinquent \$1,858.00, which represents one month's payment under § 1.01 of Debtor's plan. Payments are to be received no later than the 25th day of each month.
2. Debtor's Motion to Confirm was heard and denied on August 11, 2015. No subsequent plan or Motion to Confirm has been filed.

Dckt. 55, 58 ¶ 3(a, b).

Trustee's objections are well-taken.

First, the Trustee seeks dismissal of the case on the basis that the Debtor is \$1,858.00 delinquent in plan payments, which represents one month of the \$1,858.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, 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 August 17, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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

77. [13-21194-E-13](#) RICHARD/LINDA STROM MOTION TO DISMISS CASE
DPC-3 Chinonye Ugorji 9-16-15 [[47](#)]

Final Ruling: No appearance at the October 14, 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.**

78. [14-30994-E-13](#) JOHN MONROE MOTION TO DISMISS CASE
DPC-2 Kristy A. Hernandez 9-16-15 [[53](#)]

Final Ruling: No appearance at the October 14, 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Ronnie and Blossom Soriano ("Debtor") filed for Chapter 13 relief on January 5, 2011. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee"), filed the instant Motion to Dismiss on September 16, 2015. Dckt. 75. Trustee declares that Debtor is \$2,350.00 delinquent, which represents multiple months of Debtor's \$600.00 monthly payment. Dckt. 77 ¶ 3.

Debtor filed a response on September 22, 2015. Dckt. 79. Debtor merely alleges the delinquency will be cured before the hearing, and provides no evidence of payments to Trustee.

The Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,350.00 delinquent in plan payments, which represents multiple months of the \$600.00 plan payment. A promise to pay is not sufficient to demonstrate the delinquency has been cured. 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.

80. [12-24595](#)-E-13 CHRISTOPHER DARLING MOTION TO DISMISS CASE
DPC-3 Peter G. Macaluso 9-16-15 [[56](#)]

Final Ruling: No appearance at the October 14, 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.

81. [15-24495](#)-E-13 JAMES/DANIELLE VINCENT
Pro se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-16-15 [[40](#)]

DEBTOR DISMISSED: 9/17/15
JOINT DEBTOR DISMISSED:
9/17/15

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been 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 September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Irvin Burnett White and Theresa Nicole White ("Debtor") filed for Chapter 13 relief on October 9, 2014. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee"), filed the instant Motion to Dismiss on September 16, 2015. Dckt. 65. Trustee declares that Debtor is \$1,300.00 delinquent, which represents two months of Debtor's \$650.00 monthly payment. Dckt. 67 ¶ 3.

Debtor filed a response on September 17, 2015. Dckt. 69. Debtor alleges that she experienced "unanticipated family events that forced them to focus their attention elsewhere." Dckt. 69.

Debtor filed a second response on October 6, 2015. Dckt. 71. Debtor alleges that a payment of \$1,300.00 was sent to Trustee, and that an additional payment of \$650.00 should have posted on October 9, 2015. Dckt. 71. Debtor offers no evidence to demonstrate the payments.

The Trustee's objection is well-taken.

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

is \$1,300.00 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. A mere claim that the payments have been made is not sufficient to demonstrate the delinquency has been cured. 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 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 September 29, 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. At the hearing -----
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The court's decision is to grant the Motion to Dismiss and dismiss the case.

Parker and Donna Pugh ("Debtor") filed for Chapter 13 relief on April 6, 2015. Dckt. 1.

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 29, 2015. Dckt. 90. Trustee alleges that Debtor is delinquent \$1,636.00, which represents two payments of the monthly \$818.00 due under the plan. Dckt. 92 ¶ 3.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,636.00 delinquent in plan payments, which represents multiple months of the \$818.00 plan payment. Failure to make plan payments is unreasonable delay

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

On October 8, 2015, Debtor filed a First Modified Plan (Dckt. 100) and Motion to Confirm (Dckt. 96). Under the proposed First Modified Plan the total payments to be made by Debtor through September 2015 would be \$4,820.00. The Trustee's Motion to Dismiss states that Debtor is in default for the months of August and September 2015. Debtor' proposed Modified Plan does not provide for the payment of any portion of the \$2,454.00 in plan payments for July, August, and September 2015 which have been diverted to other purposes.

Debtor merely alleges in the Motion that,

"Due to a change in circumstances, Debtors cannot complete the plan as originally confirmed as stated under penalty of perjury in the accompanying Declaration of Debtors. In that Declaration Debtors state, 'We had unexpected expenses caused us to get behind on our payments. We have been working hard on a loan modification and we were finally offered one from Wells Fargo, the motion to approve has been heard and granted and now our plan will be modified to reflect them as a Class 4 Claim.'"

Motion, Dckt. 96. In the Declaration, Debtor identifies specific one time expenses, such as repairs to their vehicle and fence repair. Dckt. 98. Further, Debtor states that they could not make the payment because their daughter "was not in the position to help us." Debtor makes the general reference that "She [daughter] is now able to contribute and will do so in order to keep the home for our grandchildren." *Id.*

No declaration has been provided by the Daughter upon whom Debtor depends to make the monthly plan payment. No evidence is provided that the unnamed daughter will be able to fund Debtor's plan for the next fifty-five months. The Motion and Declaration state little more than (1) the Debtor's cannot afford the plan payments, (2) their Daughter must fund their plan with some unstated amount, and (3) no evidence of the Daughter's ability to fund a plan for almost six years for Debtor is provided.

On the current income information provided, Debtor lists \$4,216.70 in monthly income. Exhibit 1, Dckt. 99. This is comprised of \$3,216.70 in Social Security Income and \$1,000.00 a month from Debtor's daughter. For the fifty-five months of the Plan Debtor's Daughter must provide \$55,000 in post-petition gifts.

Debtor has provided new expense information. Exhibit 2, Dckt. 99. This information may be attested to under penalty of perjury. It is not clear from the Declaration. The Expenses listed on Exhibit 2 do not appear to be credible or stated in good faith, including:

- A. Home Maintenance, Repair, and Upkeep.....\$ 0.00
- B. Food and Housekeeping for two adults.....\$280.00
- C. Medical and Dental for two adults.....\$ 25.00
- D. Transportation (2 vehicles on Schedule B).....\$200.00

The court coined a phrase several years ago with this type of testimony

about expenses which have been presented to the court by Debtor and Debtor's counsel - a "Liar Declaration." A debtor, desperate to maintain their lifestyle lies about expenses to come to a pre-determined plan payment. (This occurs in Chapter 11, 12, and 13 cases.) Debtor's counsel, eager to please the client (or just lazy and willing to accept money from the client) willingly prepares the Liar Declaration, has the client make the statements under penalty of perjury, and files it with the court, without regard to the truth of the testimony. The eager (or lazy) attorney then condemns the poor client to five or six to twelve months of anguish in which they waste their few remaining assets before losing everything.

Merely because a debtor and debtor's counsel says "give me, I want," does not mean that the court hands orders out as instructed. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 130 S. Ct. 1367, 1381 n.14, 176 L. Ed. 2d 158, 173 n.14 (2010); see also *Varela v. Dynamic Brokers, Inc. (In re Dynamic Brokers, Inc.)*, 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing *Everett v. Perez (In re Perez)*, 30 F.3d 1209, 1213 (9th Cir. 1994)), discussing the duties of the judge.

Here, Debtor has offered no credible opposition to the Motion. To the contrary, Debtor has demonstrated that they cannot prosecute this bankruptcy case.

Fortunately for Debtor, they have wasted only five months in this bankruptcy case, for which they were able to make only one payment. Debtor can confer with counsel, determine what can actually be attempted in good faith, truthfully, and honestly in a bankruptcy case, and file a second case. Since Debtor already has obtained a loan modification for their home, they will not be facing an immediate foreclosure, so they can carefully deliberate before jumping back into bankruptcy.

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.

84. [15-24698](#)-E-13 WALLEY YEP
Jonathan D. Matthews

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-14-15 [[54](#)]

DEBTOR DISMISSED: 9/17/15

Final Ruling: No appearance at the October 14, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, the case having been dismissed.

85. [14-29716-E-13](#) MICHAEL SCARZELLA
MRL-1 Mikalah R. Liviakis

CONTINUED MOTION TO DISMISS
CASE
9-26-15 [[33](#)]

No Tentative Ruling: The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3).

Local Rule 9014-1(f)(3) 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, Bank of New York Mellon, parties requesting special notice, and Office of the United States Trustee on October 1, 2015. By the court's calculation, 7 days' notice was provided.

The Motion to Dismiss Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Dismiss Case is xxxx.

On September 26, 2015, Michael Scarzella ("Debtor") filed an Ex-Parte Application for Dismissal. Dckt. 33. The Application states:

"Debtor hereby requests dismissal of the above-referenced Chapter 13 bankruptcy without prejudice, effective immediately."

On September 30, 2015, the court issued an Order Setting Hearing on Motion to Dismiss, setting the Motion to Dismiss at 10:30 a.m. on October 8, 2015. Dckt. 34.

DEBTOR'S DECLARATION

On October 4, 2015, the Debtor filed a Declaration in support of the

Application to Dismiss. Dckt. 36.

The Debtor states that he and his non-filing spouse fell behind on payments to their mortgage company because Debtor's wife needed to pay federal and state income taxes that they had fallen behind on. The Debtor states that his wife have been accidentally under withholding and wanted to correct the issue. The Debtor states that they paid approximately \$5,000.00 in income taxes during this time. The Debtor states that he felt it was critical to pay these tax debts because the Debtor's wife works in the financial industry and is at risk of losing her job if her personal financial management is not kept up to date which is also the reason she is not a co-debtor in the instant case. The Debtor also states that they paid \$2,000.00 for dental costs and \$500.00 for tires. The Debtor states that they have adjusted the withholdings for the future to a level where there should not be a delinquency.

The Debtor argues that while the Debtor and his wife believed they had good reasons for being unable to keep up with the original plan commitments (making the mortgage payments directly), the Debtor argues that he felt that there was a large risk that they would be unsuccessful if the Debtor applied for a modification of the plan or if Debtor were to oppose the motion for relief from the automatic stay in the instant case because of the uncertainty of whether a modification would be approved.

The Debtor argues that he and his wife could have done more to anticipate and plan for their personal expenses and so the Debtor did not expect the creditors and trustee to excuse them from the issues the Debtor states they are dealing with.

Based on these facts, the Debtor states that is why he preferred filing a new chapter 13 case. The Debtor states that he met with his attorney to discuss the options and the Debtor found that filing a new case was the best decision to ensure that the Debtor did not lose his home after falling behind in payments. The Debtor argues the filing a new case allows for a new 60 month plan period which will allow more time to establish a catch up payment plan before the mortgage company forecloses.

The Debtor concludes by states that the Debtor's attorney was planning on requesting the dismissal of the instate case prior to filing the new one but Debtor's counsel did not do so.

BACKGROUND

The Debtor commenced this Chapter 13 case on September 30, 2014, and the court confirmed Debtor's Chapter 13 Plan on November 11, 2014. Dckt. 18. Under the terms of the Plan, Debtor was to make monthly payments of \$2,169.00 to the creditor holding the claim secured by the Para Drive Property. Dckt. 17. The court granted relief from the automatic stay to Bank of New York Mellon to allow it to foreclose on the Para Drive Property due to what were then \$8,655.56 in post petition defaults (4 months) in payments due to that creditor under the confirmed plan. Dckt. 30.

Debtor commenced another bankruptcy Case, Bankr. E.D. Cal. No. 15-26895 on August 31, 2015 (two weeks before the hearing on the motion for relief in the instant case). Debtor's plan in the second bankruptcy case states that there was \$12,000.00 in arrears (approximately six months of payments) on the

October 8, 2015 at 10:30 a.m.

- Page 119 of 121 -

claim secured by the Para Drive Property. Case No. 15-26895, Dckt. 5.

OCTOBER 8, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on October 14, 2015 at the request of the Debtor.

APPLICABLE LAW

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

The Bankruptcy Code Provides:

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

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

DISCUSSION

In the Motion to Dismiss, the Debtor does not provide an explanation as to where the monies which were to be paid to the creditor as required under the confirmed plan in this case were spent. Debtor does not provide an explanation as to why this case should be dismissed, rather than Debtor seeking to modify the plan in this case. When the motion for relief was filed, there were only four monthly payments in arrears.

Additionally, Debtor does not disclose in the Motion to Dismiss this case is that he has previously filed a subsequent case which has been assigned to a different judge. Finally, Debtor offered no opposition to the Motion for Relief from the Automatic Stay which was filed by Bank of New York Mellon.

While the Debtor's declaration does provide some explanation of where the funds went, namely to the tax delinquency, the dental costs, and new tires, the Debtor's entire argument appears to be based upon the Debtor's spouse and not the Debtor himself. Additionally, the Debtor's declaration still lacks explanation as to why, instead of objecting to the Motion for Relief or filing a modified plan, filing a new case was the most prudent move. The Debtor states in one line that the decision to file a new case was to allow more time for the Debtor to catch up on mortgage payments prior to the Bank of New York Mellon

foreclosing on the Debtor's home. This, however, does not explain the Debtor's failure to actively prosecute the instant case in good faith. The Debtor does not provide any specifics as to why cause exists for the dismissal of the instant cause pursuant to 11 U.S.C. § 1307.

At the hearing, Debtor requested that the hearing be continued.

The court shall issue a minute order 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 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 ~~xxxxxx~~