

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 4, 2015 at 10:00 A.M.

1. [11-42501](#)-C-13 KIMBERLY CROTEAU CONTINUED MOTION TO DISMISS
DPC-1 David Ritzinger CASE
9-16-15 [[42](#)]

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. 28 days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss.

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

1. Debtor is \$1,355.15 delinquent in plan payments to the Trustee to date with another monthly payment of \$451.69 to become due prior to this hearing. Debtor has paid \$19,874.28 into the plan to date.

Debtor's Opposition

Debtor states that the delinquent payment will be paid prior to this hearing. In response to this motion, debtor made 2 payments of \$451.69 each on September 18, 2015 and September 21, 2015, respectively, and debtor has

scheduled a payment of \$451.69 for October 1, 2015, and another payment in the amount of \$451.77 will be made on or before October 14, 2015. The total of all such payments is \$1,806.84, the amount necessary to cure debtor's default and bring debtor's payment current on or prior to the hearing date.

Previously

Debtor's counsel appeared at the October 14, 2015 hearing and argued that Debtor had brought all payments current, except for the September 2015 payments. The cure was stated to have been made with monies Debtor borrowed.

Later in the hearing, Debtor's counsel "corrected the record," stating he didn't say Debtor had borrowed the money, but that he had discussed with Debtor borrowing the money to cure the September 2015 payment. Counsel then stated that he did not know the source of the monies, but could explain why the plan was feasible (notwithstanding Debtor's defaults and having to borrow money to cure) and the reasons for the defaults.

The court continued the hearing to November 4, 2015. In light of the failure to provide evidence to support facts to support the arguments advanced by counsel and counsel's statements at the hearing being contradictory, the court ordered that corrective sanctions in the amount of \$500.00 shall be ordered to be paid by Debtor's counsel if he fails to submit credible, admissible, properly authenticated evidence.

Discussion

The docket reflects that the Debtor filed and served supplemental pleadings providing evidence of the defaults, the source of the monies used to cure the default and make the September 2015 plan payment, and the feasibility of Debtor prosecuting this case in light of the default on October 28, 2015. Dkts. 51-53.

Debtor's declaration and accompanying exhibits demonstrate that Debtor is current on Plan payments.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied.

2. [15-21802](#)-C-13 CHARLES WILLIAMS
DPC-1 Mikalah Liviakis

MOTION TO DISMISS CASE
10-7-15 [[34](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 21, 2015. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$300 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100 is due prior to this hearing. Debtor has paid a total of \$6,772 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$5,175 delinquent in plan payments to the Trustee to date with another monthly payment of \$1,725 to become due prior to this hearing. Debtor has paid \$23,812 into the plan to date.

Debtor's Opposition

Debtor states that the delinquent payment will be paid prior to this hearing.

Discussion

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

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

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

holding that:

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

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

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

5. [15-24310](#)-C-13 ANGELO/LISA OLIVA
DPC-2 Thanh Truong Foxx

MOTION TO DISMISS CASE
10-7-15 [[73](#)]

Final Ruling: No appearance at the November 4, 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. 28 days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss.

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

1. Debtor is \$2,425 delinquent in plan payments to the Trustee to date. Debtor has paid \$15,163 into the plan to date.

Debtor's Opposition

Debtor states that her employment situation has changed and she needs to modify her plan.

Previously

The court continued the hearing to November 4, 2015. In light of the failure to provide evidence to support facts to support the arguments advanced by counsel and counsel's statements at the hearing being contradictory, the court ordered that corrective sanctions in the amount of \$500.00 shall be ordered to be paid by Debtor's counsel if he fails to submit credible, admissible, properly authenticated evidence.

The Debtor, shall file and serve on or before October 30, 2015, supplemental pleadings providing evidence of the defaults, the source of the

monies used to cure the default and make the September 2015 plan payment, and the feasibility of Debtor prosecuting this case in light of the default and the representation that Debtor has borrowed monies (without court authorization) to cure the default.

If Debtor's counsel, Marc Carpenter, fails to file evidence which is credible, admissible, and properly authenticated, the court shall order that counsel shall pay \$500.00 in corrective sanctions. The court orders these corrective sanctions because of Debtor's counsel arguing unsupported facts and failing to present any evidence in opposition to this Motion for the October 14, 2015 hearing.

Discussion

The docket reflects that the Debtor filed and served supplemental pleadings providing evidence of the defaults, the source of the monies used to cure the default and make the September 2015 plan payment, and the feasibility of Debtor prosecuting this case in light of the default on October 29, 2015. Dkts. 32-34.

Debtor's declaration and accompanying exhibits demonstrate that Debtor is current on Plan payments.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied.

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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$1,182 delinquent in plan payments to the Trustee to date with another monthly payment of \$591 to become due prior to this hearing. Debtor has paid \$0 into the plan to date.

Debtor's Opposition

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

Discussion

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

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

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

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

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

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

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

8. [15-27026](#)-C-13 RICHARD BRANTLEY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-9-15 [[21](#)]

Also #9

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor, Trustee, and other such other parties in interest as stated on the Certificate of Service on October 9, 2015.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (77\$ due on October 5, 2015).

The court's decision is to sustain discharge 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 court shall issue a minute order 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) (2).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 20, 2015. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a) (1) (B) (iv).

Discussion

The court has considered the Trustee's reasons for dismissal and finds them to be valid. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$2,580 delinquent in plan payments to the Trustee to date with another monthly payment of \$2,060 to become due prior to this hearing. Debtor has paid \$90,048 into the plan to date.

Debtor's Opposition

Debtor states that the delinquent payment will be paid prior to this hearing.

Discussion

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

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

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

holding that:

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

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

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

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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$725 delinquent in plan payments to the Trustee to date with another monthly payment of \$374 to become due prior to this hearing. Debtor has paid \$16,821 into the plan to date.

Debtor's Opposition

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

Discussion

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

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

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

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$3,094 delinquent in plan payments to the Trustee to date with another monthly payment of \$2,372 to become due prior to this hearing. Debtor has paid \$15,882 into the plan to date.

Debtor's Opposition

Debtor states that the delinquent payment will be paid prior to this hearing.

Discussion

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

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

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

holding that:

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

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

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

13. [11-37933](#)-C-13 CARL/DIANNE CAGAANAN
DPC-2 W. Scott de Bie

MOTION TO DISMISS CASE
10-7-15 [[69](#)]

Final Ruling: No appearance at the November 4, 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.

Final Ruling: No appearance at the November 4, 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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$7,280 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,120 is due prior to this hearing. Debtor has paid a total of \$18,160 into the plan thus far.

The court has considered the Trustee's reason for dismissal and finds it to be valid. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

15. [15-26234](#)-C-13 KATHERINE GERRARD
DPC-4 David Silber

MOTION TO DISMISS CASE
10-1-15 [[44](#)]

Final Ruling: No appearance at the November 4, 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.

16. [11-38235](#)-C-13 MELVIN/PATRICIA PURBAUGH MOTION TO DISMISS CASE
DPC-8 Peter Macaluso 10-7-15 [[111](#)]

Final Ruling: No appearance at the November 4, 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.

Final Ruling: No appearance at the November 4, 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 October 7, 2015. 28 days' notice is required. That requirement was met.

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

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

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

1. After the court sustained objections to confirmation on February 24, 2015, the Debtor failed to file an amended plan. .

Discussion

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 18, 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 court has considered the Trustee's reasons for dismissal and finds them to be valid. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

18. [11-39836](#)-C-13 JUSTIN WALKER
DPC-1 Richard Chan

MOTION TO DISMISS CASE
10-7-15 [[23](#)]

Final Ruling: No appearance at the November 4, 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.**

19. [14-23638](#)-C-13 MELANIE O'BRIEN
DPC-1 Catherine King

MOTION TO DISMISS CASE
10-7-15 [[30](#)]

Final Ruling: No appearance at the November 4, 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.

20. [11-41545](#)-C-13 DANIELE SHIMONAUFF
DPC-1 John Tosney

MOTION TO DISMISS CASE
10-7-15 [[28](#)]

Final Ruling: No appearance at the November 4, 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.**

21. [12-39946](#)-C-13 VICTORIA GOKEY
DPC-2 Diana Cavanaugh

MOTION TO DISMISS CASE
10-7-15 [[193](#)]

Final Ruling: No appearance at the November 4, 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.

22. [13-32947](#)-C-13 JEREMY/TANYA DAVIDEK
DPC-1 David Alden

MOTION TO DISMISS CASE
10-7-15 [[45](#)]

Final Ruling: No appearance at the November 4, 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. [14-31849](#)-C-13 BRANDON/CHRISTINE
DPC-2 MCMANIGAL
Mark Wolff

MOTION TO DISMISS CASE
10-7-15 [[25](#)]

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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$10,325 to date with the last payment received on July 27, 2015. Trustee shows a total of \$13,275 is due, thus Debtor is delinquent \$2,950 in plan payments. Prior to the hearing on this matter, a payment of \$1,475 will come due. As a result, Debtor will need to pay \$4,425 in order to bring the plan current as of the date of this hearing.

DEBTORS' RESPONSE

Debtors respond to Trustee's motion, stating that they have made one additional payment of \$1,475 posted to Trustee's system on October 20, 2015. Debtors state that they have fallen behind on plan payments for two reasons: first, Debtors' only vehicle broke down, and Debtors incurred vehicle repair and towing costs of approximately \$1,000 causing them to miss their August 2015 plan payment. Next, Debtor Brandon Mcmanigal did not receive a commission check in September 2015 causing them to miss their September 2015 payment. As stated in their declaration, Debtors intend to become current by making extra payments in November and December. Debtor Brandon Mcmanigal expects to receive a large commission for November and expects to receive

commissions for December due to a backlog in orders. Further, Debtors have determined that a plan modification is necessary to reclassify a debt owed to SMUD, and anticipate filing a modified plan shortly after November 2, 2015.

DISCUSSION

Debtors state their intent to be current by December 2015, and have provided reasons as to why they became delinquent in plan payments, and provide that they expect to be current in plan payments due to an increase in income from increased commissions for the months of November and December. However, despite providing a declaration providing a reason for the default, the court is not convinced that debtors will be able to timely cure the deficiency in plan payments, especially considering the uncertainty of debtor receiving the large commissions represented in the declaration.

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. 28 days' notice is required. This requirement was met.

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

The court's decision is to deny the Motion to Dismiss.

PREVIOUSLY

At the previous hearing on October 14, 2015, the court continued the hearing to November 4, 2015 at 10:00 a.m., with supplemental pleadings to be filed and served by October 30, 2015.

MOTION

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$15,240 to date with the last payment received on August 5, 2015. Trustee shows a total of \$19,723 is due, thus Debtor is delinquent \$4,482.50 in plan payments. Prior to the hearing on this matter, a payment of \$1,793 will come due. As a result, Debtor will need to pay \$6,275 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor states that Debtor has made a payment to Trustee of \$896.50 on September 18, 2015, a payment through TFS of \$1,793 on September 24, 2015, and will overnight \$1,793 on October 9, 2015 and the final payment of \$1,793 will be made on or before the date of hearing on this motion.

DEBTOR'S SUPPLEMENTAL OPPOSITION

On October 28, 2015, Debtor filed a supplemental pleadings as directed by the court. Debtor confirms she was delinquent in plan payments, and she made a payment to Trustee of \$896.50 on September 18, 2015, a payment through TFS of \$1,793 on September 24, 2015, and on October 10, 2015, Debtor overnighted \$3,586 to Trustee's address in Folsom with guaranteed delivery by October 13, 2015 before noon. Debtor believes that Trustee received the outstanding amounts, curing the default described in Trustee's motion to dismiss.

Debtor states that she has set up with TFS her October and November payments, three payments of \$1,200, to bring her current through November 2015.

Finally, Debtor states that she had some health issues causing her to fall behind in plan payments. Debtor's adult son has moved in with her to assist financially and to help in attorney communications so she does not fall delinquent again.

DISCUSSION

Debtor represents to the court that she has cured the delinquency in plan payments, the basis upon which Trustee advanced this motion to dismiss. Based upon Debtor's representations made under penalty of perjury, the court is satisfied that Debtor is prosecuting her chapter 13 case in good faith.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied and the case is not dismissed.

25. [15-26552](#)-C-13 SHIRLEY GLASGOW
DPC-2 Scott Hughes

MOTION TO DISMISS CASE
10-7-15 [[26](#)]

Final Ruling: No appearance at the November 4, 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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$159,802 to date with the last payment received on September 15, 2015. Trustee shows a total of \$179,392 is due, thus Debtor is delinquent \$19,590 in plan payments. Prior to the hearing on this matter, a payment of \$5,606 will come due. As a result, Debtor will need to pay \$25,196 in order to bring the plan current as of the date of this hearing.

DEBTORS' RESPONSE

Debtors state that they will file, set, serve, and be current under an amended plan on or before the date of hearing on this matter.

DISCUSSION

Despite Debtors' representations in their motion, the docket reflects that no amended plan has been filed or served. Further, although Debtors have stated their intent to be current by the date of hearing, they have not provided evidence to the court that they are actually current. No testimony, or even argument by counsel, is provided as to why the Debtor has defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. In contending that Debtor would be "current" by

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

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

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

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

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

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

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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$6,585 to date with the last payment received on September 4, 2015. Trustee shows a total of \$7,800 is due, thus Debtor is delinquent \$1,215 in plan payments. Prior to the hearing on this matter, a payment of \$405 will come due. As a result, Debtor will need to pay \$1,620 in order to bring the plan current as of the date of this hearing.

DEBTOR'S RESPONSE

Debtor provides that prior to date of hearing, Debtor will file a second modified plan which will cure the material default.

DISCUSSION

Despite Debtor's representations in her motion, the docket reflects that no modified plan has been filed or served. 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 September 10, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is causing unreasonable delay prejudicial to creditors, 11 U.S.C. § 1307(c). Debtor is \$4,168.72 delinquent in plan payments to Trustee to date and the next scheduled payment of \$2,084.36 is due October 25, 2015. The case was filed on July 24, 2015 and the plan in section 1.01 calls for payments to be received no later than the 25th of each month. Debtor has paid \$0 into the plan to date.

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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$14,520 to date with the last payment received on August 14, 2015. Trustee shows a total of \$23,232 is due, thus Debtor is delinquent \$8,712 in plan payments. Prior to the hearing on this matter, a payment of \$2,904 will come due. As a result, Debtor will need to pay \$11,616 in order to bring the plan current as of the date of this hearing.

DEBTORS' RESPONSE

Debtors respond, stating in their declaration that they fell behind in three plan payments because their daughter was in need of financial aid after their daughter suffered harassment and needed to relocate apartments. Debtors state they do not have the funds to make up the plan payments, but they will file a modified plan by October 30, 2015 with a motion to modify, which will bring them current.

DISCUSSION

The docket reflects that no modified plan or accompanying motion to modify has been filed. Debtors are in material default under the terms of

the current, confirmed 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.

Final Ruling: No appearance at the November 4, 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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$52,216 to date with the last payment received on October 6, 2015. Trustee shows a total of \$60,528 is due, thus Debtor is delinquent \$8,312 in plan payments. Prior to the hearing on this matter, a payment of \$4,656 will come due. As a result, Debtor will need to pay \$12,968 in order to bring the plan current as of the date of this hearing.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$39,610 to date with the last payment received on June 23, 2015. Trustee shows a total of \$41,020 is due, thus Debtor is delinquent \$1,410 in plan payments. Prior to the hearing on this matter, a payment of \$470 will come due. As a result, Debtor will need to pay \$1,880 in order to bring the plan current as of the date of this hearing.

DEBTOR'S RESPONSE

Debtor states in her declaration that she will try to get her attorney a cashier's check for him to present at court hearing an amount that brings the account current.

DISCUSSION

Although Debtor has stated her intent to be current by the date of hearing, she has not provided evidence to the court that she is actually current. No testimony, or even argument by counsel, is provided as to why the Debtor has defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. Further, Debtor offers

no testimony or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default under the terms of the confirmed Plan, 11 U.S.C. § 1307(c)(6). Debtor has paid \$53,939 with the last payment received August 10, 2015. Trustee shows \$61,657 is due, and thus debtor is delinquent \$7,718 in plan payments. Debtor's monthly payment is \$3,642. Prior to the hearing, an additional \$3,642 will become due, and as a result debtor will need to pay \$11,360 to be current by the hearing.

DEBTORS' RESPONSE

Debtors respond to the instant motion, stating their intent to bring payments current prior to the date of hearing.

OCTOBER 14, 2015 HEARING

At the hearing on this matter on October 14, 2015, the court ordered Debtor to file and serve on Chapter 13 Trustee and U.S. Trustee supplemental evidence and supporting pleadings concerning the source of monies to cure the default, the reason for the default, and state the ability of Debtor to pay the additional sums of money to cure the default and pay the current plan payments is unique only to the month in which the cure payment was made.

DEBTORS' SUPPLEMENTAL DECLARATION

On September 22, 2015, Debtors filed a supplemental declaration in accordance with the court's order. The declaration provides that Debtors fell behind in plan payments because they were forced to assist Debtor Teresa Burk's father, who is in a board and care facility. Debtor's father declined in health and Debtors were forced to hire additional help to administer care. Debtor's brother is an emergency room registered nurse, and has switched locations to be closer to Debtor's father, and as of last week, Debtor's brother assumed the financial responsibility and Debtors should be able to make payments going forward. Moreover, Debtors were forced to repair their vehicles in June 2015.

Debtors made the full amount of delinquent payments to Chapter 13 Trustee on September 1, 2015, and believe that the payments posted to Trustee the morning of September 9, 2015.

Debtors state they were able to extract the funds to make the payment because Debtors are the beneficiaries of Debtor Teresa Burk's father's trust (the Martin Bypass Survivor's Trust). Debtors were able to request an advance on those funds and cure the default. Exhibit A, Dckt. 71.

Debtors are confident they will be able to resume monthly payments without delay.

TRUSTEE'S RESPONSE

Trustee responds to Debtors' declaration, reporting to the court that Debtors are now current through and including September 2015 payments. However, the Trustee's review of Debtors' schedules reveals that the Martin Bypass Survivor's Trust is not disclosed as an asset on Debtors' schedule B or exempt on Schedule C, and Debtors' Schedule I fails to list any current or future income from the Martin Bypass Survivor's Trust. Trustee is uncertain whether any further income from the trust is expected during the life of the plan and Debtor's declaration is not clear on this issue.

DEBTOR'S SUPPLEMENTAL DECLARATION

On October 23, 2015, Debtors filed a supplemental declaration in accordance with the court's order. Dckt. 77. Debtors state that they did not disclose the Martin Bypass Survivor's Trust because they were not made aware of the existence of the trust or their interest in it until April 2, 2015, after Debtor's father passed on February 26, 2015. Debtors state that they are unaware at this time whether or not they will be receiving any funds or monies beyond what they borrowed to bring their Chapter 13 payments current. Debtors assert they were not attempting to hide the existence of their interest or future interest in the trust, or mislead the court or chapter 13 trustee in any manner.

DISCUSSION

Based on the representations of Debtors in their declaration, the court is satisfied that Debtors have not intentionally attempted to hide their interest in the Martin Bypass Survivor's Trust. However, the court notes that Debtors were made aware of this interest in April 2015, and Debtors did not and have not, to date, amended their schedules to reflect this interest. The court also expresses concern that Debtors are completely unaware, nearly five months after being made known of the existence of the trust, whether or

not they will be receiving any further funds or future monies from the trust, beyond what they have "borrowed" to bring their plan payments current. The court will render its decision upon hearing the oral arguments of the parties involved.

The court shall issue a minute order 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

33. [15-25180](#)-C-13 JALYN SCHNEIDER
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-2-15 [[28](#)]

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 Jalyn Schneider ("Debtor"), Trustee, and other parties in interest on October 2, 2015.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$73.00 due on September 28, 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 subject of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$73.00].

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.

34. [11-33981](#)-C-13 THOMAS/ROBERTA REUSSER MOTION TO DISMISS CASE
DPC-1 Eric Schwab 10-7-15 [[53](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$6,475 to date with the last payment received on August 31, 2015. Trustee shows a total of \$8,625 is due, thus Debtor is delinquent \$2,150 in plan payments. Prior to the hearing on this matter, a payment of \$1,725 will come due. As a result, Debtor will need to pay \$3,875 in order to bring the plan current as of the date of this hearing.

DEBTOR'S RESPONSE

Debtor files an opposition, stating that the debtor intends to pay \$3,875 to Trustee by November 4, 2015.

DISCUSSION

Although Debtor has stated her intent to be current by the date of hearing, she has not provided evidence to the court that she is actually current. No testimony, or even argument by counsel, is provided as to why the Debtor has defaulted in the payments. To date, no evidence has been presented that the Debtor has cured the delinquency. Rather, it is merely an argument stated by Debtor's counsel. Further, Debtor offers no testimony

or argument as to how such a substantial default could be cured in one month given the Debtor's limited projected disposable income.

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

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

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

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

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

36. [15-26482](#)-C-13 STEPHEN ANDERSON
DPC-2 Dale Orthner

MOTION TO DISMISS CASE
10-7-15 [[22](#)]

Final Ruling: No appearance at the November 4, 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.**

37. [12-29884](#)-C-13 CAROL SMITH
DPC-1 C. Anthony Hughes

MOTION TO DISMISS CASE
10-7-15 [[92](#)]

Final Ruling: No appearance at the November 4, 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.

38. [15-23185](#)-C-13 AMANDA SHRINER
DPC-1 Richard Jare

MOTION TO DISMISS CASE
10-7-15 [[62](#)]

Final Ruling: No appearance at the November 4, 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 (*pro se*) and Office of the United States Trustee on October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$1,660 to date with the last payment received on July 27, 2015. Trustee shows a total of \$2,490 is due, thus Debtor is delinquent \$830 in plan payments. Prior to the hearing on this matter, a payment of \$415 will come due. As a result, Debtor will need to pay \$1,245 in order to bring the plan current as of the date of this hearing.

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

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

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

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

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

Final Ruling: No appearance at the November 4, 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.

Final Ruling: No appearance at the November 4, 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 10/06/15. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$167,868.02 to date with the last payment received on July 8, 2015. Trustee shows a total of \$181,795.50 is due, thus Debtor is delinquent \$13,927.48 in plan payments.

Trustee received a notice of death that was filed on September 25, 2015, confirming the date of debtor's death was July 25, 2015. No action has been taken pursuant to FRBP 1016, 7025, and 9014 to file a motion to substitute parties. While the 90 days to file a motion for Omnibus Relief after the notice of death has not yet expired, the delinquency in plan payments is an ongoing issue.

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 November 4, 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 August 12, 2015. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is continued to January 20, 2015 at 10:00 a.m.
--

PREVIOUSLY

At the hearing on September 9, 2015, Debtor represented that an amended plan and motion to confirm, as well as an objection to the proof of claim filed by the Internal Revenue Service will be filed and served. Debtor represented that the Chapter 13 case shall be diligently prosecuted. The court continued this motion to November 4, 2015 at 10:00 am.

MOTION

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

1. Debtor is \$6,806 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,402 is due August 25, 2015. The case was filed on September 12, 2014. The Plan calls for payments of \$28,782 paid through month 7 and \$3,402 beginning in month 8. Debtor has paid \$32,182 into the plan to date.
2. Debtor filed a Notice of Withdrawal of the Motion to Confirm plan filed June 19, 2015, SS-3 Dckt. 74. The Motion to Confirm was set for hearing on August 11, 2015. To date, the plan filed June 19, 2015 remains unconfirmed. Debtor has failed to file a confirmable plan and set the plan for a confirmation hearing.

DEBTOR'S RESPONSE

Debtor responds to Trustee's motion, stating her intent to file a proposed amended plan prior to the September 9, 2015 hearing date.

DEBTOR'S SUPPLEMENTAL BRIEF

On October 21, 2015, Debtor filed a supplemental response to Trustee's motion, stating that Debtor will file a proposed amended plan well before January 6, 2016. Debtor states that she is waiting for a final amended proof of claim from the Internal Revenue Service. Debtor's counsel has been in touch with the IRS office and has been informed that an amended claim should be forthcoming before the end of October. Until such claim is filed, Debtor cannot determine what amount will be owed for tax year 2008.

DISCUSSION

The docket reflects that on November 2, 2015, Debtor and Chapter 13 Trustee filed a stipulation to continue this motion to dismiss to January 20, 2016 in order to permit Debtor to resolve the discrepancy with the Internal Revenue Service claim. The court will enter the stipulation at the request of the parties.

The court shall issue a minute order 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 January 20, 2015 at 10:00 a.m.

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is convert the case to a chapter 7 bankruptcy under Chapter 7 of Title 11, United States Code.
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PREVIOUSLY

This matter came on calendar before this court on September 9, 2015. At the hearing, new counsel for Debtor appeared and argued that he and the Debtor be afforded some additional time to put forth a Chapter 13 Plan. The court continues the hearing to afford Debtor and new counsel one final opportunity to prosecute a Chapter 13 Plan in good faith before converting the case to one under Chapter 7.

MOTION

This Motion to Dismiss the Chapter 13 bankruptcy case of Arthur Fingerle ("Debtor") has been filed by Chapter 13 Trustee, David Cusick ("Movant"). Movant asserts that the case should be dismissed based on the following grounds.

1. Debtor is \$7,833.00 delinquent in plan payments, which represents multiple months of the \$2,611.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor has paid \$0 into the plan to date.
2. Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's

prior plan on June 15, 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).

DEBTOR'S RESPONSE

Debtor requests in his response that the court continue the motion for 30 days as a substitution of attorney is pending before the court, and counsel requires time to analyze and determine whether an amended plan is required.

CREDITORS' RESPONSE

Creditor, the Internal Revenue Service, requests that the case be converted to a chapter 7 rather than dismissed, as conversion would be in the best interest of creditors.

Debtor filed his petition for relief under chapter 13 on April 1, 2015, and filed his plan on April 15, 2015. The IRS timely filed a proof of claim on April 27, 2015, Claim No. 3. No objection to the claim has been filed. At the time of filing, Debtor had not filed tax returns for 2013 or 2014. Debtor subsequently filed his 2013 return on or around May 22, 2015, and the IRS amended its claim in the total amount of \$169,498.00, of which \$160,354.66 is a secured claim and \$8,118.41 is a priority claim. The 2014 return is still not filed. Debtor was unable to confirm a chapter 13 plan. Assets exist for the benefit of the creditor.

Because cause exists for dismissal or conversion, Creditor here asserts conversion is in the best interest of creditors.

CHAPTER 13 TRUSTEE'S RESPONSE

Chapter 13 Trustee responds to the United States' request for conversion, and agrees that conversion of the case to chapter 7 would be in the best interest of creditors. Debtor has \$399,531 in non-exempt real and personal property on his schedules A and B.

Trustee also provides that on May 21, 2015, Trustee filed an Objection to Confirmation where Trustee disclosed that Debtor admitted to having an interest in Irvine Recreation park, business equipment and a storage unit, all assets not listed on schedules. These assets are likely to increase the chapter 7 liquidation amount. Debtor admitted at the 341 meeting to inheriting Irvine Recreation Park and indicated he did not have a lot of information as to that asset or value.

To allow Debtor to obtain information, the Trustee continued the meeting to June 11, 2015. Since that date, Debtor has failed to attend the meeting and another continued meeting on August 6, 2015. Debtor has also failed to provide additional information request regarding Irvine Recreation Park. There is another continued meeting on October 1, 2015.

CHAPTER 13 TRUSTEE'S SUPPLEMENTAL DECLARATION

On October 13, 2015, Chapter 13 Trustee filed a supplemental declaration with the court. Trustee provides that Debtor is delinquent \$13,055 in plan payments. The first payment became due on May 25, 2015, the month following the filing of the petition on April 1, 2015. Debtor has not made any payments to date. Moreover, Debtor has failed to appear at multiple continued meetings of creditors. Furthermore, no further information has been provided as to the Irvine Recreation Park. The Trustee maintains that conversion is appropriate in this case.

DISCUSSION

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).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b). This chapter 13 bankruptcy was commenced on April 1, 2015, five months prior to this hearing date. Debtor has, to date, failed to confirm a plan after Trustee's objection to confirmation was sustained on June 16, 2015. No plan is pending on the docket. Next, Debtor has failed to make four plan payments as of the date of this hearing, and paid nothing into the plan thus far. Finally, Debtor has repeatedly failed to attend the continued meeting of creditors or provide requested documents to Trustee. This has caused unreasonable delay prejudicial to creditors pursuant to 11 U.S.C. § 1307(c).

Next, the court has determined that conversion is in the best interest of creditors and the estate. As discussed by the Internal Revenue Service and the Chapter 13 Trustee, creditors would be best served by liquidation of assets, which include a scheduled amount of \$399,531, and potentially more assets disclosed by Debtor which include an interest in Irvine Recreation Park, business equipment, and a storage unit.

Finally, given Trustee's update on this case on October 13, 2015, the court finds conversion of this case is appropriate.

The motion is granted and the case is converted to a case under Chapter 7.

The court shall issue a minute order 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 is granted and the case is converted to a Chapter 7 bankruptcy under Chapter 7 of Title 11, United States Code.

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 October 7, 2015. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$59,580 to date with the last payment received on August 27, 2015. Trustee shows a total of \$69,510 is due, thus Debtor is delinquent \$9,930 in plan payments. Prior to the hearing on this matter, a payment of \$3,310 will come due. As a result, Debtor will need to pay \$13,240 in order to bring the plan current as of the date of this hearing.

DEBTOR'S RESPONSE

Debtor responds, stating that financial circumstances have changed and Debtor is currently preparing a modified plan and anticipates filing the modified plan prior to the date of hearing.

DISCUSSION

The docket reflects that no modified plan has been filed. Trustee's basis for objection remains outstanding. 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.
