

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Ronald H. Sargis  
Chief Bankruptcy Judge  
Sacramento, California

November 16, 2016, at 10:00 a.m.

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1. [14-28302-E-13](#) SHEILA RAY MOTION TO DISMISS CASE AND/OR  
DPC-2 Mohammad Mokarram MOTION TO CONVERT CASE TO  
CHAPTER 7  
10-17-16 [70]

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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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 17, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor, Sheila Ray, is \$450.00 delinquent in plan payments (with another \$150.00 coming due before the hearing), which represents multiple months of the \$150.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor is deceased. Dckt. 67. No motion for substitution has been filed. Debtor may have a life insurance policy from her job. No policy was listed on Schedule B, but a life insurance expense was

indicated on Debtor's paystubs for \$3.68. Trustee believes Debtor had only a modest life insurance policy (approximately \$12,500.00). The Trustee requests that the case be dismissed or converted if the life insurance is deemed sufficient to warrant such an action.

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

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

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

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

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

2. **15-20204-E-13**      **TIMOTHY/JENNIFER VINCENT**      **MOTION TO DISMISS CASE**  
**DPC-2**                      **Justin Kuney**                      **10-18-16 [46]**

**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.

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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 18, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,878.00 delinquent in plan payments (with another \$2,939.00 coming due before the hearing), which represents multiple months of the \$2,939.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR’S OPPOSITION**

On November 3, 2016, Debtor filed an opposition to assert that Debtor plans to present evidence at the hearing that the default payment has been cured or that a modified plan and corresponding motion to confirm has been filed. Unfortunately for Debtor, a promise to present evidence is not evidence of such.

No Modified Plan or a corresponding Motion to Confirm has been filed, and Debtor has not presented any evidence of the default being cured. Cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

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

3. [16-23407-E-13](#)      **IRMA QUIAMBAO**      **MOTION TO DISMISS CASE**  
**DPC-2**                      **Kristy Hernandez**                      **10-17-16 [28]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 28, 2016, Dckt. 50; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of



6. [16-25610](#)-E-13 PAUL FERNANDES  
Kristy Hernandez

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
9-29-16 [23]

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Order to Show Cause was served by the Clerk of the Court on Paul Fernandes (“Debtor”), Debtor’s Attorney, and the Chapter 13 Trustee as stated on September 29, 2016. The court computes that 48 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$79.00 due on September 26, 2016).

**The Order to Show Cause is discharged, and the case shall proceed in this court.**

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

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

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

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

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

7. [16-25610-E-13](#) PAUL FERNANDES  
Kristy Hernandez

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-31-16 [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:  
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The Order to Show Cause was served by the Clerk of the Court on Paul Fernandes ("Debtor"), Debtor's Attorney, and the Chapter 13 Trustee on October 31, 2016. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 24, 2016).

**The Order to Show Cause is sustained, and the case is dismissed.**

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

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

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

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

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

**No 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.

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

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, 2016. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

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

**The Motion to Dismiss is ~~XXXXX~~.**

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 30, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**OPPOSITION OF DEBTOR’S ATTORNEY**

On November 2, 2016, Debtor’s Attorney filed an opposition to assert that Debtor is drafting a new plan in accordance with adjusted income and expenses. Debtor has continued to make the plan payments in the amount of \$406.97. Debtor seeks to file an adversary proceeding against her former bankruptcy attorney for malpractice for failing to properly advise Debtor to strip her second mortgage in her Chapter 13 case. The new plan provides that her residence will be sold to protect Debtor’s \$100,000.00 equity interest. Debtor requests that the case not be dismissed to prevent a foreclosure.

The filing of the new motion has been delayed because Debtor's attorney has relocated to a new office. Debtor's attorney's office has also been disrupted due to the death of a case manager, who was replaced by another case manager who was soon offered another position and thus resigned the position at the attorney's office. A bankruptcy consultant stepped in to help, but he suffered a heart attack on October 30, 2016, and is currently hospitalized.

Despite the statements made by Debtor's Attorney, a review of the docket shows that a new plan has not been filed with the court. Cause exists to dismiss this case. The motion is **xxxxx**.

The court shall issue a minute order 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 **xxxxx**.

9. [16-20113-E-13](#)      **VICTOR NAVARRO AND**      **MOTION TO DISMISS CASE**  
**DPC-2**      **KRISTINA ZAPATA-NAVARRO**      **10-18-16 [58]**  
   **Michael Benavides**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,444.00 delinquent in plan payments (with another \$1,144.00 coming due before the hearing), which represents one month of the \$1,144.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

10. [14-20717](#)-E-13      CANDICE SILVA      MOTION TO DISMISS CASE  
DPC-3      Mohammad Mokarram      10-18-16 [53]

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 14, 2016, Dckt. 60; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 60, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 14, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.**

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

Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, specifically the 2015 tax return. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee also bases the Motion to Dismiss on the Debtor's failure to provide all required business documents, including:

- A. Inventory list for redeemed home furnishings and decor;
- B. Documents requested for Taylor Creek Auctions, including:
  1. Questionnaire,

2. Inventory list,
  3. Six months of bank statements, and
  4. Proof of license and insurance or written statements that no such documentation exists; and
- C. Documents for Lake Tahoe Visitors Map, including:
1. Questionnaire,
  2. Six months of bank statements, and
  3. Proof of license and insurance or written statements that no such documentation exists.

On November 1, 2016, the Trustee filed a Status Report in which he asserts an additional ground for dismissal of the case on the basis that the Debtor is \$143.00 delinquent in plan payments, which represents one month of the \$143.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR'S OPPOSITION**

Debtor filed an Opposition on November 2, 2016. Dckt. 38. Debtor opposes the motion on the following bases:

- A. Debtor appeared at the Meeting of Creditors;
- B. Debtor has provided the Trustee with a copy of the 2015 tax return;
- C. Debtor has provided all requested business documents;
- D. Debtor is current in the plan payments; and
- E. Debtor has amended Schedule I, Schedule J, Statement of Current Monthly Income, and Chapter 13 plan, which is set for a confirmation hearing.

Debtor requests that the court deny the Trustee's motion.

## **TRUSTEE'S STATUS REPORT**

The Trustee filed a Status Report on November 7, 2016. Dckt. 49. The Trustee reports that Debtor is current on plan payments, has filed an Amended Plan and a Motion to Confirm, and only needs to address the issue of appearing at the Continued Meeting of Creditors on December 1, 2016. The Trustee requests that the hearing on the Motion be continued to a date after December 1, 2016.

## **DISCUSSION**

Debtor has filed an Amended Plan and Motion to Confirm. Dckt. 44 & 47. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by the Debtor. Dckt. 46. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. Fed. R. Evid. 601, 602.

While the Debtor claims to have appeared at the Meeting of Creditors, the Trustee's Report at the Meeting of October 28, 2016, indicates that Debtor did not appear, but Debtor's Attorney did appear. The court's review of the grounds for dismissal show that appearing at the December 1, 2016 Meeting of Creditors is the last issue raised by the Trustee to be addressed. Accordingly, the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017, to allow time for Debtor to attend the First Meeting of Creditors.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.

**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.

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

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 26, 2016. FN.1. By the court’s calculation, 21 days’ notice was provided. 14 days’ notice is required.

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

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FN.1.      The Certificate of Service lists November 26, 2016 as the service date, despite being filed with the court on October 26, 2016. The court will presume this was a mere scrivener’s error.

FN.2.      The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$2,720.00 delinquent in plan payments, which represents one month of the \$2,720.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

### **Prior Bankruptcy Cases**

Rosana Bustos, one of the debtors in this case, had a prior Chapter 13 case that was dismissed in 2015. Bankr. E.D. Cal. 15-20029 (“Prior Case”). Rosana Bustos was represented by the same counsel who is representing Debtor in this case. The Prior Case was dismissed due to debtor Rosana Bustos having defaulted in the required plan payments. 15-20029; Civil Minutes, Dckt. 36. In determining the Prior Case should be dismissed, the court stated:

“The information previously provided by Debtor under penalty of perjury demonstrates that the Debtor does not have the financial ability to cure the arrearage, having only \$2,372.00 in monthly projected income. Amended Schedule I, Dckt. 21 at 1–3; Amended Schedule J, *id.* at 4–6; and Declaration, Dckt. 20. The cure payment and arrearage are 230% of Debtor’s projected disposable income and are slightly less than the Debtor’s monthly income, including the \$2,100 a month contribution make by three other family members.”

*Id.*

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. [13-23119-E-13](#)  
DPC-4

CYNTHIA MCDONALD  
Peter Cianchetta

MOTION TO DISMISS CASE  
10-18-16 [\[42\]](#)

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,650.76 delinquent in plan payments (with another \$2,326.64 coming due before the hearing), which represents multiple months of the \$2,326.64 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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



- B. An appeal of the Motion to Avoid Lien was filed on August 6, 2014, and that appeal is pending.
- C. The total amount of claims is \$382,329.01, of which \$237,632.27 relates to a surrendered property from the Debtor's prior Chapter 7 case.
- D. Of the remaining \$144,696.74 secured claims amount, Barton Christensen and Paula Christensen have a claim for \$140,000.00.
- E. Debtor's plan proposes thirty-six (36) payments of \$100 and a lump-sum payment of \$13,000.00, which totals \$16,600.00.
- F. Debtor is in month thirty-seven (37) and have paid \$16,700.00.
- G. Debtor's plan would be completed if the appeal is granted in Debtor's favor.

### **OCTOBER 12, 2016 HEARING**

At the hearing, Debtor's counsel argued that he did not know that he needed to get a plan confirmed and believed that so long as he filed an appeal of the court denying confirmation of the prior plan, Debtor could exist in this bankruptcy case for years with no confirmed plan or make any attempt to confirm a plan.

The arguments of counsel reminded the court that the denial of confirmation was not merely due to denying the motion to avoid the lien, but the Debtor not qualifying as a Chapter 13 debtor—there being no regular income to fund a plan. Instead, Debtor stands as the proxy for Debtor's children who have "contributed" \$13,000 to fund the plan.

That further reminded the court that it appears that Debtor may be the subject of possible elder abuse, the children preventing Debtor from receiving substantial equity in the property to fund their day-to-day expenses, instead forcing Debtor to live in squalor. The court questions how counsel for the Debtor, who owes a fiduciary duty to the Debtor, would allow this to continue.

Counsel for Debtor provided no good explanation for why or how he could believe that Debtor could ignore a secured claim and exist in this Chapter 13 case with no payments to creditors because no plan was confirmed.

The court debated dismissing the case, but decided to continue the matter to 10:00 a.m. on November 16, 2016, to give Debtor's counsel an opportunity to propose and seek confirmation of a plan that complies with the Code.

The court also mentioned possibly referring this matter to the Sacramento County department responsible for investigating elder abuse. Lastly, the court ordered the Debtor and any children responsible for the care of Debtor to appear on October 18, 2016, for the hearing on the Motion for Omnibus Relief.

## MOTION FOR OMNIBUS RELIEF HEARING ON OCTOBER 18, 1016

At the hearing, the court could not determine—with Debtor and her daughter present—that Debtor was capable of administering the case on behalf of the deceased co-debtor or that further administration of this Chapter 13 is in the best interests of all parties. The court denied without prejudice the Motion for Omnibus Relief.

### DISCUSSION

On November 9, 2016, Debtor filed a supplement to the Opposition, only seven days before this hearing. The court continues the hearing to afford the Trustee the opportunity to file a Reply, if any, and the court to consider the additional points. In reviewing the Opposition, the court notes that it is long on argument and short on citation to any legal authorities. The one case authority cited in the Supplemental Opposition is “*In re Patrick*, Case No. 12-03042 NPO (S.D. Miss. 2013).” That case addressed whether a debtor is required to use Social Security payments to fund a Chapter 13 Plan.

The Debtor continues to obfuscate the real legal issue of eligibility for Debtor under 11 U.S.C. § 109(e) that “Only an individual with regular income . . .” may be a Chapter 13 debtor. Debtor ignores any case law and quotes the legislative history that states “regular income” for this Code section may include: “individuals whose primary income is from investments, pensions, social security, or welfare.” This language from the legislative history is quoted in Debtor’s Supplemental Pleading (p. 2:22–26) and then ignored when Debtor argues that because most of the money to fund a plan is a one-time “gift,” that is adequate.

In this Supplemental Opposition, Debtor’s counsel continues the theme that the two debtors in this case “are neither sophisticated debtors, and are persons of limited means trying to simply live in their home peacefully and undisturbed.” Dckt. 277 at p. 5:13–15. Though counsel continues to speak of Debtor in the plural, one of the debtors has passed away during this case. Additionally, while counsel continues the theme of the “unsophisticated debtor,” it had been disclosed that the late debtor was a doctor (MD) and at the last hearing that the surviving debtor has a university degree.

A short declaration has been filed for Debtor, in which she states that she has written a longer declaration in her native language (since she does not speak or write in English), and it will be filed with the court at some later date. Declaration, Dckt. 278. In this Declaration, Debtor states that if she sells the property and claims her homestead exemption

“I will not be able to keep any cash due to the social security restrictions and how it will affect my receiving health care, and the cost which may be in excess of the \$855 per month under the Obamacare plan.”

*Id.*, p. 2:5–9. Counsel for Debtor has not provided the court with any laws or regulations that provide that the government will confiscate Debtor’s homestead exemption portion of the proceeds from the sale of the property. Rather, it appears that counsel is being driven (and using as a canard) the statements of the “neither sophisticated” Debtor that he has argued to this court. Or possibly he is relying on the “legal conclusions” of Debtor’s daughter, Florence Auyeung. *See* Florence Auyeung Declaration, Dckt. 280 at p.

2:9–11, stating under penalty of perjury, “While it seems like selling the property will be [sic] bring some benefit to my mother, the sale would be taken by the social security administration and medicare.” The statements by Debtor’s daughter, who may want to increase her inheritance rather than creditors be paid, is not persuasive testimony that the federal government will confiscate all of the Debtor’s exemption and leave her penniless, wasting away in a convalescent home.

Before dismissing the case, the court wants to read Debtor’s actual statements under penalty of perjury (which may actually be the Debtor’s own statements for the first time since these bankruptcy cases were filed in 2009). The court continues the hearing on the Motion to Dismiss to 1:30 p.m. on December 6, 2016. Debtor shall file and serve her actual, personal testimony declaration, with the English translation (performed by an independent, credible third-party translation service) and a supplemental brief providing the court with the laws and regulations that would cause Debtor’s homestead exemption proceeds to be confiscated by the United States Government and not be used for Debtor’s housing, care, and basic life needs. (While “Obamacare” has been in the headlines recently, for whatever shortcomings are identified, it has not included the seizing of a poverty-level individual’s homestead exemption.) Presumably, if the homestead exemption proceeds could be seized, then the real property itself could be seized. The Declaration and Supplemental Brief shall be filed and served on or before November 30, 2016.

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 hearing on the Motion to Dismiss is continued to 1:30 p.m. on December 6, 2016.

**IT IS FURTHER ORDERED** that on or before November 30, 2016, Debtor shall file her declaration, written in her native language, and an English translation (performed by an independent, credible third-party translation service) thereof, and a supplemental brief providing the court with the laws and regulations that would cause Debtor’s homestead exemption proceeds to be confiscated by the United States Government and not be used for Debtor’s housing, care, and basic life needs.

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 19, 2016. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,275.00 delinquent in plan payments (with another \$4,425.00 coming due before the hearing), which represents multiple months of the \$4,425.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

16. [12-25428-E-13](#)  
DPC-1

SCOTT CIRAULO  
Mary Ellen Terranella

MOTION TO DISMISS CASE  
10-19-16 [35]

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 8, 2016, Dckt. 42; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 42, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$500.00 delinquent in plan payments (with another \$250.00 coming due before the hearing), which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

18. [16-25131](#)-E-13 IYANAH FLETCHER  
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-11-16 [42]**

**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 Iyanah Fletcher ("Debtor"), Debtor's Attorney, and the Chapter 13 Trustee on October 11, 2016. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 3, 2016).

**The Order to Show Cause is sustained, and the case is dismissed.**

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

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

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

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

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on September 29, 2016. By the court’s calculation, 48 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$400.00 delinquent in plan payments (with another \$400.00 coming due October 25, 2016), which represents one month of the \$400.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion, instead stating that the Debtor consents to the Trustee dismissing the Motion voluntarily if the Debtor cures the delinquent plan payments. Dckt. 48.

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.

20. [16-25332](#)-E-13      **STEPHEN/LESLEE FOURNIER**      **MOTION TO DISMISS CASE**  
DPC-2                      **Mary Ellen Terranella**                      **10-14-16 [36]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 14, 2016. By the court’s calculation, 33 days’ notice was provided. 28 days’ notice is required.

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

**The hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$40.00 delinquent in plan payments (with another \$1,965.00 coming due before the hearing). Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the Debtor is over the unsecured debt limit, disqualifying the Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, unsecured debts” of less than \$394,725.00 may be a debtor under Chapter 13. Here, the Debtor owes \$595,721.00 in unsecured debt.

**DEBTOR’S OPPOSITION**

Stephen Fournier and Leslee Fournier (“Debtor”) filed an Opposition to the Trustee’s Motion on November 2, 2016. Dckt. 45. Debtor claims to be current with plan payments. Debtor also indicates that Schedule F has been amended to reflect the balance that will be paid upon completion of Debtor Leslee Fournier’s income-based repayment plan for her student loan debt. The debt was originally listed as \$321,591.00, but schedule F now reflects a debt of \$36,360.00.

Debtor states that Mrs. Fournier has been repaying her student loans pursuant to an accepted income-based repayment plan since 2007. Debtor indicates that her monthly payment under the program is \$151.50 and is current with her payments under the program through nine years of the twenty-year

repayment term. Completion of the student loan repayment plan causes the balance of any amount not paid to be forgiven. Thus, Debtor argues that the student loans are contingent liabilities, subject to Debtor Leslee Fournier's continued performance under the income-based repayment plan.

## **TRUSTEE'S REQUEST FOR CONTINUANCE**

The Trustee filed a Request for a Continued Hearing on the Motion to Dismiss on November 8, 2016. Dckt. 61. The Trustee states that Trustee's Objection to Confirmation is set for hearing on December 6, 2016. Trustee requests continuing the Motion to 10:00 a.m. on January 18, 2017.

## **DISCUSSION**

11 U.S.C. § 109(e) provides that only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725.00 may be a debtor under Chapter 13 of this title. "[E]ligibility should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001).

Debtor's originally filed schedules indicate student loan debt in the amount of \$321,591.00 bringing the total unsecured debt to \$595,721.00. Debtor filed amended schedules, however, that now show student loan debt of \$36,360.00, bringing the total unsecured debt to \$219,974.00. Courts have generally ruled that if a debt does not come into existence until the occurrence of a future event, then the debt is contingent. COLLIER ON BANKRUPTCY ¶ 109.06[2][b] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). A debt is noncontingent if all events giving rise to liability occurred prior to the filing of the bankruptcy petition. *In re Vaughn*, 276 B.R. 323 (Bankr. N.H. 2002).

The Debtor has indicated to the court that the current noncontingent portion of the student loan debt is \$36,360.00 and that the remaining portion is contingent upon Debtor defaulting on student loan payments. The court will not *sua sponte* rule whether (and in what amount) the debt is noncontingent or contingent, but the parties appear to be interpreting the debt in a way that does not seem inconsistent with the Code. It appears that the Chapter 13 Trustee is not pressing the issue. At this time, the matter is not being litigated heavily, and the court will leave resolution of the matter to a later time, if necessary.

The Trustee having requested a continuance, the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.

21. [16-24437](#)-E-13      **ANTHONY BARCELLOS**      **MOTION TO DISMISS CASE**  
DPC-1                      **Matthew DeCaminada**                      **10-19-16 [30]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
-----

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 2, 2016, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 38, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, and Office of the United States Trustee on October 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$15,880.00 delinquent in plan payments (with another \$7,940.00 coming due before the hearing), which represents multiple months of the \$7,940.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

23. [16-20641-E-13](#)  
DPC-1

**KACEE PEREZ**  
**Richard Sturdevant**

**MOTION TO DISMISS CASE**  
**10-18-16 [21]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 3, 2016, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [16-25741](#)-E-13      **DESIREE ARBOLEDA**  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES**  
10-4-16 [20]

**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:  
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The Order to Show Cause was served by the Clerk of the Court on Desiree Arboleda ("Debtor") and the Chapter 13 Trustee on October 4, 2016. The court computes that 43 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on September 29, 2016).

**The Order to Show Cause is sustained, and the case is 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: \$79.00.

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

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

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

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

**Tentative Ruling:** 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.

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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 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$100.00 delinquent in plan payments (with another \$100.00 coming due before the hearing), which represents one month of the \$100.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. The Meeting has been continued to December 15, 2016. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Further, the Debtor's filed Chapter 13 Plan is blank. The Plan fails to: list a duration of payments; any creditors in Class 1, 2, 3, 4, 5, or 6; or provide a dividend to unsecured creditors.

## **Prior Bankruptcy Case**

Debtor filed, and had dismissed in 2016, a prior case. Bankr. E.D. Cal. 16-23252.

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

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

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

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

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

26. [16-22942-E-13](#)  
DPC-2

TRACI HAMILTON  
Richard Jare

CONTINUED MOTION TO DISMISS  
CASE  
7-27-16 [47]

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

27.

[16-23350-E-13](#)  
DPC-2

**JODY/JOY SILVA**  
**Michael Croddy**

**MOTION TO DISMISS CASE**  
**10-17-16 [65]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 4, 2016, Dckt. 77; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 77, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

28. [14-23652-E-13](#)      **PHILIP/YVETTE HOLDEN**      **MOTION TO DISMISS CASE**  
**DPC-3**                      **W. Scott de Bie**                      **10-19-16 [118]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 9, 2016, Dckt. 132; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 132, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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**The Motion to Dismiss the Chapter 13 Case is dismissed without prejudice.**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$10,500.00 delinquent in plan payments (with another \$1,595.94 coming due before the hearing), which represents multiple months of the \$1,595.94 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **DEBTOR’S OPPOSITION**

Dennis Whitcomb and Patricia Whitcomb (“Debtor”) filed an Opposition to the Trustee’s Motion November 2, 2016. Dckt. 65. The Debtor states that they will be current on or before the hearing, and Debtor requests a continuance to further supplement the record as Debtor Patricia Whitcomb has secured employment. Unfortunately for the Debtor, a promise to become current on plan payments is not evidence of such.

The Opposition is not supported by any declarations. Neither Debtor appears able, or willing, to provide any testimony under penalty of perjury. The court has addressed with Debtor’s counsel on a number of occasions that an opposition, unsupported by any evidence, is not “evidence” of the “facts” that counsel seeks to argue. Presumably, with that knowledge, if Debtor was willing to provide testimony, such testimony would have been provided. It was not.

The court also notes that the Opposition, unsupported by any evidence, was filed on November 2, 2016. In conducting the final review of the file on November 14, 2016, the court notes that no “supplemental” pleadings have been filed. No testimony about the “new employment” has been given. This further undercuts Debtor’s credibility in the prosecution of this case.

The “Opposition” is little more than asking the court to ignore Debtor being more than \$10,500.00 delinquent. While testimony could have been provided concerning the \$95,256.54 that has been paid into the plan, it has not been provided. While testimony could have been provided as to what caused the defaults, it has not been provided. While testimony could have been provided as to how Debtor intends to address the default and why it will not continue, it has not been provided.

This bankruptcy case is now three and one-half years into performance. With the regular monthly plan payments and the bonus earning payments paid into the plan by Mrs. Whitcomb, the plan to date has provided for substantial funding.

## **TRUSTEE'S EX PARTE MOTION TO DISMISS**

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 14, 2016, Dckt. 71; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 71, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,750.00 delinquent in plan payments (with another \$6,880.00 coming due before the hearing), which represents multiple months of the \$6,880.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,060.00 delinquent in plan payments (with another \$2,020.00 coming due before the hearing), which represents multiple months of the \$2,020.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **TRUSTEE’S STATUS UPDATE**

The Trustee filed a Status Update on November 8, 2016. Dckt. 95. The Trustee reports that Debtor has filed a Modified Plan, but the Debtor is delinquent under that plan still. The Trustee requests that the case be dismissed still.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckt. 89 & 91. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon the Debtor’s personal knowledge. Fed. R. Evid. 601, 602. Nevertheless, Debtor remains delinquent under the proposed Modified Plan.

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

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

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

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

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

32. [11-48055](#)-E-13      **CURTIS HEIGHER**      **MOTION TO DISMISS CASE**  
DPC-7                      **Peter Cianchetta**                      **10-19-16 [139]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

33. [16-25355](#)-E-13      **NIKOLAY KALMYKOV**      **MOTION TO DISMISS CASE**  
DPC-1                      **Pro Se**                                      **10-19-16 [21]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,425.00 delinquent in plan payments (with another \$2,425.00 coming due before the hearing), which represents one month of the \$2,425.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee seeks dismissal of the case unless Debtor files and serves an amended plan and motion to confirm by November 2, 2016, becomes current under the Plan or an amended plan by November 2, 2016, and files response by November 2, 2016, that explains why Debtor has been reasonably delayed in making plan payments. A review of the docket shows that no such filings have been made.

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.

35. [13-31957-E-13](#)      **WILLIAM ADAMS**      **MOTION TO DISMISS CASE**  
DPC-1                      **Bruce Dwiggins**                      **10-19-16 [24]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 8, 2016, Dckt. 30; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 30, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Tentative Ruling:** 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.

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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 19, 2016. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,500.00 delinquent in plan payments (with another \$4,000.00 coming due before the hearing), which represents multiple months of the \$4,000.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR’S “OPPOSITION”**

Michael Alford and Naomi Alford (“Debtor”) filed a “Reply” to the Trustee’s Motion on November 2, 2016, which the court interprets to be an Opposition. Dckt. 40. Debtor promises to be current on or before the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

37. [16-25760-E-13](#)  
DPC-1

JULIET DACPANO  
Pro Se

MOTION TO DISMISS CASE  
10-19-16 [24]

**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.

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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 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$500.00 delinquent in plan payments (with another \$500.00 coming due before the hearing), which represents one month of the \$500.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

The Trustee asserts that the Debtor is over the secured debt limit, disqualifying the Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, Debtor owes \$1,405,820.00 in secured debt.

The Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR’S OPPOSITION**

Juliet Dacpano (“Debtor”) filed an Opposition to the Trustee’s Motion on November 3, 2016. Dckt. 32. FN.1. The Debtor states that the Debtor’s only secured debt is the \$970,000.00 lien on her home. Debtor claims to have prepared and served the Trustee and all interested parties with Debtor’s Federal Income Tax documents for the 2015 year. Lastly, Debtor claims to have paid the delinquent \$500.00 plan payment.

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FN.1. Debtor filed her Opposition, declarations, and exhibits in support of the Opposition as one document. This is not the practice in the Bankruptcy Court. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” Revised Guidelines for the Preparation of Documents, ¶ (3)(a). Debtor is reminded of the court’s expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

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## **DISCUSSION**

Debtor has attached her 2015 Federal Income Tax Return to the Opposition, labeled as Exhibit 1. While Debtor has addressed that portion of the Trustee’s grounds for dismissal, there are other grounds remaining.

Debtor claims that the schedules are incorrect and that there is only \$970,000.00 in secured debt, but Debtor has not filed amended schedules to reflect that amount. Further, Debtor’s Official Form 106Sum shows unsecured Debts of \$1,330,354.00. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, “noncontingent, liquidated, unsecured debts” of less than \$394,725.00 may be a debtor under Chapter 13.

On Schedule D, Debtor lists “Bank of America” as having a \$1,405,820 secured claim, for which her residence is the collateral. Dckt. 18 at 13. On Schedule D she states that the value of the collateral is \$750,000.00. In her Opposition, Debtor states that the lien is \$970,000.00, but does not state the basis for such lower amount.

## Other Asserted Secured Claim

JPMorgan Chase Bank, N.A. (“JPMorgan”) has filed an objection to confirmation of the Debtor’s Chapter 13 Plan. Dckt. 21. JPMorgan asserts a deed of trust interest against real property commonly known as 2644 Scottsdale Dr., San Jose, California, which JPMorgan contends Debtor asserts an interest. The amount of this secured claim is asserted to be \$885,063.75. It is asserted that the plan filed by Debtor does not provide for this secured claim. The Objection to confirmation is not supported by any evidence of such asserted debt. JPMorgan has not filed a claim. The court cannot tell if Debtor had any interest in the San Jose property because most of the Statement of Financial Affairs has been left blank by the Debtor (including the sections relating to foreclosures and transfers).

On her Petition, Debtor lists having a business that is operated at 2644 Scottsdale Dr., San Jose, California. Dckt. 1 at p. 4. On Schedule B, Debtor states under penalty of perjury that she has no interests in any such business. Schedule B, pp. 2–10. On Schedule I, Debtor lists having income from “Epec Enterprise,” without disclosing an address for this business. *Id.* at 26.

Debtor’s plan provides for \$500.00 per month payments for an unstated number of months. Plan, Dckt. 20. For the Class 1 Claims, “Bank of America” is listed as having a claim for which there is a \$1,405,820 arrearage and a monthly contract payment of \$3,300.00 to be paid through the plan. No provision is made for curing the arrearage. *Id.* Debtor also lists owing \$1,260,740 in federal tax debt and \$69,914 in state tax debt. These unsecured claims eclipse the \$383,175.00 maximum for unsecured claim to qualify as a Chapter 13 debtor. 11 U.S.C. § 109(e). The rest of the Plan is left blank.

In the Debtor’s prior Chapter 7 case, the Bank of New York Mellon, fka Bank of New York, as Trustee, filed a motion for relief from the automatic stay for the 203 Gunston Court, El Dorado Hills, California property that Debtor lists as her residence (and Bank of America as the creditor). 16-20597; Motion, Dckt. 34. Debtor’s opposition to that motion centered around her intention to seek a loan modification. *Id.*; Dckt. 44.

In opposing the present Motion, Debtor states:

“I am familiar with the lien against my property including the current principal balances and my numerous attempts to get The Bank of New York Mellon, (hereafter ‘The Bank’ and his Agent, Staff and Employee Specialized Loan Servicing LLC (hereafter “loan servicer”) to modify the loan terms of my Notes and Deeds of Trust pursuant to HAMP mandated Federal and State of California Law, . . . .”

Opposition, Dckt 32. The Debtor does not state the results from the “numerous attempts” to obtain a loan modification and whether such requests have been denied.

Even if the court ignores the fact that most of Debtor’s Plan is blank, there is not sufficient monies at \$500.00 per month plan payments to fund the \$3,300.00 regular plan payment and the more than \$1,000,000.00 of tax debt.

Debtor has not filed a motion to confirm a plan, Debtor is over the secured debt limit, and additionally—even though unmentioned by the Trustee—Debtor is over the unsecured debt limit as well.

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

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

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

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

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

38.	<u>16-20361</u> -E-13 DPC-1	DANIEL MASSEY Corrina Roy	CONTINUED MOTION TO DISMISS CASE 9-1-16 [60]
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**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.

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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 1, 2016. By the court’s calculation, 41 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,824.00 delinquent in plan payments (with another \$2,412.00 coming due before the hearing), which represents multiple months of the \$2,412.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR'S OPPOSITION**

Debtor filed an opposition on September 28, 2016. Dckt. 64. The Debtor states that he will make a payment on September 30, 2016, and be current by the hearing. Unfortunately for the Debtor, a promise to pay is not evidence of such.

## **OCTOBER 12, 2016 HEARING**

At the hearing, the Trustee confirmed that the delinquency is outstanding still. The parties reported that Debtor has made a partial payment, and they agreed to continue the hearing to allow Debtor time to cure the delinquency.

## **DISCUSSION**

No further pleadings have been filed with the court, and the court has no reason to suspect the delinquency has been cured. Cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

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

**Tentative Ruling:** 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,666.38 delinquent in plan payments (with another \$1,666.38 coming due before the hearing), which represents one month of the \$1,666.38 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

The Trustee asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;

- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

The Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 1, 2016. By the court’s calculation, 15 days’ notice was provided.

The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Motion to Extend Automatic Stay is denied.**

Jennifer Rianda (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is the Debtor’s second bankruptcy petition pending in the past year. The Debtor’s prior bankruptcy case (No. 15-22909) was dismissed on June 27, 2016, after Debtor defaulted on plan payments, knowingly failed to disclose assets, and proposed to fund the plan with the illegal operation of an undisclosed corporation. *See* Order, Bankr. E.D. Cal. No. 15-22909, Dckt. 83, June 27, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

In dismissing the prior case, the court noted that Debtor has a third case that was dismissed on July 1, 2013. The court’s ruling to dismiss the prior (second) case includes the following:

“The court also notes that this is not Debtor’s first bankruptcy case. She filed a Chapter 13 case (represented by the same counsel as in this case) on March 19, 2013. Bankr. E.D. Cal. 13-23661. The first bankruptcy case was dismissed on

July 1, 2013, due to Debtor's failure to make any payments in that case. *Id.*; Civil Minutes, Dckt. 32.

This bankruptcy case was filed on April 9, 2015. On June 1, 2016, the Chapter 13 Trustee filed a motion to dismiss this case, asserting that Debtor was \$9,500.00 delinquent in payments, having failed to make any payments in this case. Motion, Dckt. 30. The motion was denied without prejudice based on the Debtor having cured the default. Civil Minutes for June 24, 2016 hearing, Dckt. 40. On December 14, 2015, the Chapter 13 [Trustee] filed another motion to dismiss this case based on the Debtor being \$26,250.00 delinquent in plan payments. Motion, Dckt. 60. Debtor's explanation as to why she was in default was the same as for the present motion, "payment delayed by political approval processes." Opposition, Dckt. 64. The court issued a conditional order of dismissal. Order, Dckt. 67. The Chapter 13 Trustee did not lodge with the court an order dismissing the case, which indicates that Debtor cured the \$26,250.00 arrearage and made the next \$10,500.00 plan payment as specified in the conditional order of dismissal.

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

...

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

...

#### Status of The Simi Group, Inc.

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

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[https://w3.lexis.com/research2/pubrec/searchpr.do?\\_m=037b2d115ea9a1d8014b5a053a233869&\\_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkAb&\\_md5=dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1](https://w3.lexis.com/research2/pubrec/searchpr.do?_m=037b2d115ea9a1d8014b5a053a233869&_src=314682.3006188&csi=314682&wchp=dGLzVzB-zSkAb&_md5=dc8e8c4a87c6db3ca22fce7c9e67540a&lnasReturn=1)  
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The person listed as the president of The Simi Group, Inc. by the Secretary of State is Daniel Patrick Desmond. A search of this court's files discloses that Daniel

Patrick Desmond has filed three recent bankruptcy cases. Bankr. E.D. Cal. Nos. 12-38387, 13-3555, and 14-31728. In each of his three cases, Mr. Desmond has been represented by the same attorney as the Debtor in this case.

...

Simi Group, Inc.

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

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

...

### **RULING**

Cause exists to grant the Trustee the relief requested. However, it appears that it may be in the best interest of creditors to convert the case to one under Chapter 7 rather than dismiss it.

At the hearing, no good reason [was given] for not dismissing this case. Debtor attempted to argue that her misstatements in this case and prior cases under penalty of perjury may have been “inadvertent.” Counsel for Debtor (and her husband in his bankruptcy cases) states that Debtor and her husband own Simi Group, Inc., and could not explain why on multiple occasions both of them have stated under penalty of perjury that they own no stock in any corporations.

With respect to failing to disclose the names of their spouse in the various bankruptcy cases, no credible explanation was provided.

With respect to illegally operating a corporation, [its] corporate powers having been suspended, counsel for Debtor argued that Debtor could just treat it as a sole proprietorship. That conflicts with the various Schedules I filed in the multiple bankruptcy cases by Debtor and her husband stating that they were and are employed by the corporation. Further, such statements that Debtor would now want to contend she was a sole proprietorship raises a series of other issues, including the non-disclosure of such sole proprietorship and the failure to provide for self employment taxes.

The Debtor is in default, the Debtor has knowingly failed to disclose assets, and the Debtor proposes to fund her plan with the illegal operation of the undisclosed corporation. This case is not being prosecuted in good faith.”

15-22909; Civil Minutes, Dckt. 81.

## CONSIDERATION OF REQUEST TO EXTEND AUTOMATIC STAY

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor did not understand the various options and methods of rectifying a delinquency in plan payments and waited too long to communicate the issue to Debtor's Attorney. Dckt. 16.

Debtor asserts that the nature of her business (run along with a non-filing spouse) fluctuates because it relies on contracts to create software. Debtor states that the business was overly reliant on government contracts in the last year, but the business has since diversified its contracts to create a more stable flow of revenue.

Debtor testifies that it is her intention to pay all of the mortgage arrearage and a 100% dividend to creditors having general unsecured claims. Debtor does not testify as to how she, and her nonfiling spouse who has filed and had dismissed multiple bankruptcy cases, can now accomplish what they have failed to do in five prior bankruptcy cases. Merely telling the court, "we have diversified our contracts" does not provide credible, persuasive testimony that Debtor and her nonfiling spouse can now perform this Plan.

The Chapter 13 Plan requires monthly plan payments of \$10,500.00. This is necessary to make a \$5,272.00 monthly mortgage payment and a \$4,350.00 monthly arrearage payment for the \$848,000.00 debt secured by their \$1,122,000.00 residence. Schedule D, Dckt. 10 at 13.

On Schedule I, Debtor states that she and her non-debtor spouse are employed by "Simi Group, Inc." Schedule I, *Id.* at 19. In checking on November 14, 2016, the California Secretary of State website, it is reported that the corporate powers of "The Simi Group, Inc.," for which Daniel Patrick Desmond (Debtor's spouse) is the Agent for Service of Process are "FTB Suspended." <http://kepler.sos.ca.gov/>. It

appears that Debtor’s income is from an entity that cannot do business in California. *See* Cal. Rev. Tax § 23301 (providing for the suspension of all corporate powers, rights, and privileges).

On Schedule I, Debtor states that the gross income that she and her husband receive from their suspended corporation is \$14,500.00 per month. That equals \$174,000.00 per year gross income. On the Statement of Financial Affairs, Debtor states under penalty of perjury that the gross income from wages or business for herself and her husband have been:

- A. January 1, 2016–September 30, 2016.....\$90,750 (\$10,083/month avg.)
- B. January 1, 2015–December 21, 2015.....\$87,000 (\$7,250/month avg.)
- C. January 1, 2014–December 31, 2014.....\$21,000 (\$1,750/month avg.)

Statement of Financial Affairs, Part 2, Question 4; Dckt. 10 at 24-25.

Debtor also states that in 2016 she received \$90,327.00 for “Corporate Loan Repayment.” Statement of Financial Affairs, Part 2, Question 5; *Id.* at 25. No \$90,000.00 account receivable for a “Corporate Loan” was listed on Schedule B in the prior bankruptcy case. 15-22909, Dckt. 1.

The Debtor has not sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. From the evidence presented, and there now being a heretofore undisclosed \$90,000.00 asset in the prior case, Debtor has demonstrated her continuing bad faith in the filing and prosecution of bankruptcy cases. Debtor’s only motivation appears to maintain a \$1,000,000.00 lifestyle without the ability to pay for a \$1,000,000.00 lifestyle.

Debtor does now disclose that Simi Group, Inc. is a corporation in which she may have an interest, but contends that it is just her husband’s (Daniel Desmond’s) company. Schedule B, Dckt. 10 at 6. In his most recent bankruptcy case, 14-31728, Daniel Desmond (represented by the same attorney in his multiple cases as the Debtor) stated under penalty of perjury that he had no interests in any corporations or business entities. 14-31728; Schedule B, Dckt. 30 at 4–7. However, on the Statement of Financial Affairs, Question 18, Mr. Desmond listed The SIMI Group, Inc. as a business for which he had 100% ownership. *Id.*; Dckt. 30 at 26.

The Debtor has not adequately addressed the intricate inter-leaving of nonproductive, dismissed bankruptcy filings by herself and her husband that create the following pattern:

Debtor Jennifer Ann Rianda	Filed	Dismissed	Dismissed	Filed	Daniel Patrick Desmond Filed Cases
			01/02/2013	10/16/2012	Chapter 13 Case 12-38387

Chapter 13 Case 13-23661	03/19/2013 (Filed two months after 12-38387 dismissed)	07/01/2013			
			02/12/2014	12/10/2013 (Filed five months after 13-23661 dismissed)	Chapter 13 Case 13-35555
			02/19/2015	11/30/2014 (Filed nine months after 13-35555 dismissed)	Chapter 13 Case 14-31728
Chapter 13 Case 15-22909	04/09/2015 (Filed five months after 14-31728 dismissed)	06/27/2016			
Current Chapter 13 Case 16-26966	10/19/2016 (Filed four months after 15-22909 dismissed)				

The Debtor and her non-debtor spouse show a pattern of filing a bankruptcy case, having it dismissed, and then filing a new bankruptcy case within a year (which new bankruptcy case will ultimately be dismissed).

Debtor having failed to rebut by clear and convincing evidence the presumption of bad faith, the Motion is denied. FN.3.

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 FN.3. In not extending the automatic stay “as to the Debtor,” the court makes no ruling as to the automatic stay that applies to property of the bankruptcy estate. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to the Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4) Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate expressly provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate), and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.  
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The court shall issue a minute order 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 Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied.

41. [16-23267-E-13](#) **GEORGE NJENGE AND RACHEL CONTINUED MOTION TO DISMISS**  
**DPC-3** **EKINDESONE** **CASE**  
**D. Randall Ensminger** **8-18-16 [41]**

**Final Ruling:** No appearance at the October 12, 2016 hearing is required.

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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’ Attorney, and Office of the United States Trustee on August 18, 2016. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal due to Ndile Njenge and Rachel Ekindesone (“Debtor”) being over the unsecured debt limit, the Debtor’s failure to file all tax returns during the four-year period preceding the filing of the petition, and the Trustee being unable to verify the identity of the Debtor.

#### **DEBTOR’S OPPOSITION**

Debtor filed an Opposition to Trustee’s Motion to Dismiss On September 27, 2016. Dckt. 54.

The Debtor first object to the Trustee’s assertion that Debtor are over the unsecured debt limit. The Opposition states that the \$497,604.44 listed in the Debtor’ Schedules as potentially owing to the IRS is disputed, and an Objection to Claim has been filed regarding that debt. The Schedules have also listed potential claims of the State of California EDD and FTB in the amount of \$1.00 each because Debtor do not think that they have any outstanding tax obligation to either creditor.

Next, Debtor's Opposition states that Debtor Ndile Njenge has re-mailed both his 2011 and 2012 personal federal tax returns to the IRS. A copy of each return has been filed concurrently with the Opposition. Dckt 55, Exhibits A & B.

Finally, the Opposition indicates that Debtor Ndile Njenge could not locate his social security card prior to the Meeting of Creditors but has now found it. Additionally, the Opposition states that Co-Debtor Rachel Ekindesone presented both her driver's license and social security card at the meeting of creditors. Both Debtor's social security cards have been filed as exhibits in support of Debtor's Opposition.

## **OCTOBER 12, 2016 HEARING**

At the hearing, the court continued the matter to 10:00 a.m. on November 16, 2016. Dckt. 59.

## **DEBTOR'S SUPPLEMENTAL OPPOSITION**

Debtor filed a Memorandum in Opposition to Trustee's Motion to Dismiss on November 2, 2016. Dckt. 65. FN.1. Debtor argues that they have not exceeded the unsecured debt limit because \$497,604.44 listed on Debtor's schedules as potentially being owed to the IRS is *disputed*. After the IRS filed an Amended Proof of Claim, Debtor's Attorney agreed with IRS attorney Nithya Senra to engage in informal discovery in an attempt to reach agreement on the correct amount of the IRS claim. Debtor has provided Debtor's Attorney with bank records for the company that is the subject of the IRS claim: Camrock Co., Inc. Debtor's Attorney has not yet forwarded those records to the IRS but believes that they will show that Co-Debtor Njenge never operated the company as a partnership as alleged.

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FN.1. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents, ¶ (3)(a). Debtor is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).  
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Debtor has learned that the IRS asserts that income tax obligations are due by Debtor and are excepted from discharge by 11 U.S.C. § 523(a)(7). Debtor counters with the argument that section 523(a)(7) applies to penalties, fines, and similar obligations owing to governmental entities only. Debtor believes that such section does not apply to income taxes, which would mean that the income taxes would be dischargeable.

Debtor hopes to resolve the IRS amended claim issues soon, but if Debtor is not able to do so by the end of November 2016, then Debtor anticipates filing another objection to claim.

## **TRUSTEE'S STATUS UPDATE**

The Trustee filed a Status Update on November 3, 2016. Dckt. 66. The Trustee argues that because the Schedule of Debts listed two tax claims at \$0.00 and two at \$1.00, and indicated that the debts

were discharged, effectively then, the Debtor was requiring the court to look beyond the schedules, and the proofs of claim should be considered as to eligibility.

After the IRS filed an amended claim for the amount of \$475,823.52, the Trustee notes that Debtor is over the unsecured debt limit still.

The amended IRS claim indicates to the Trustee that the Debtor has not filed tax returns for 2010, 2011, and 2012. That concern has not been addressed.

Lastly, the Trustee reports that he has been able to determine that the Social Security numbers reported on the Debtor's voluntary petition match the numbers listed on Debtor's 2015 tax return.

### **STATEMENT OF THE IRS**

The IRS filed a pleading in support of dismissing the case on November 4, 2016. Dckt. 68. The IRS supports the Trustee's arguments and also requests that the court consider the pattern of delay that the Debtor has exhibited during multiple bankruptcy filings. The IRS requests that the court convert the case to one under Chapter 7 of the Code because it may be in the best interests of the IRS, other creditors, and the estate.

### **DISCUSSION**

The Trustee moves for dismissal based on Debtor Ndile Njenge's failure to file tax returns for the 2010, 2011, and 2012 years. Filing of the returns is required. 11 U.S.C. § 1308. Additionally, the Trustee seeks dismissal because he failed to provide the Trustee with proof of social security number. 11 U.S.C. § 521(h)(2). The Co-Debtor has filed as exhibits tax returns for the 2011 and 2012 tax years, and the issue of verifying Social Security numbers has been resolved. The 2010 tax return has not been filed, though.

The Trustee also moves for dismissal on the basis that the Debtor is over the unsecured debt limit, disqualifying them from being Chapter 13 debtors. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, unsecured debts of less than \$394,725.00" may be a debtor under Chapter 13. Here, the Debtor *disputes* the debt owed to the IRS on the basis that it is not subject to 11 U.S.C. § 523(a)(7). Despite the allegation that the claim is being brought under that section of the Code, neither Debtor nor the IRS have provided evidence as to what section of the code is being used to support the amended claim. The court does not presume to provide evidence for the parties. Merely because Debtor *disputes* the debt is not a basis for excluding it from the 11 U.S.C. § 109(e) unsecured claim limits.

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

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

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

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

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

42. [16-25669](#)-E-13      **ANDREAS KAZOS**      **MOTION TO DISMISS CASE**  
DPC-1                      **Pro Se**                      **10-19-16 [37]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

43. [16-26771-E-13](#)  
SJS-1

JOHN MOORE  
Matthew DeCaminada

CONTINUED MOTION TO EXTEND  
AUTOMATIC STAY  
10-13-16 [8]

**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.

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 13, 2016. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The Motion to Extend the Automatic Stay is denied.**

John Moore ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case as applied to Wells Fargo Bank, N.A. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 12-33903) was dismissed on August 31, 2016, after Debtor filed an Ex Parte Motion to Dismiss. *See* Order, Bankr. E.D. Cal. No. 12-33903, Dckt. 101, August 31, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

#### **NOVEMBER 1, 2016 HEARING**

At the hearing, the court extended the automatic stay on an interim basis through and including 12:00 p.m. on November 18, 2016. The court continued the hearing on the matter to 10:00 a.m. on November 16, 2016. Dckt. 24.

## APPLICABLE LAW

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209–10 (2008). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c)(3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

*In re Elliot-Cook*, 357 B.R. at 814–15.

## GROUND STATE BY DEBTOR AND EVIDENCE PROVIDED

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because Debtor requested dismissal through an ex parte motion. In that case, Debtor's monthly mortgage payments fluctuated frequently from a low of \$1,030.00 to a high of \$1,510.18. Debtor had a confirmed modified plan that included provisions to apply for a loan modification, but that application was denied. The current Plan provides for Wells Fargo Bank, N.A. to be paid pre-petition arrears and ongoing conduit mortgage payments through Section 2.08 of the Plan. The Plan also includes monthly payments in Class 2A to a creditor with a judgment line and two holding claims in Section 2.13 to the Internal Revenue Service and Franchise Tax Board.

With respect to the prior case which was dismissed, Debtor testifies:

- A. Declaration ¶ 8—
  - 1. "I live in my primary residence with my daughter and survive on a single income."
  - 2. "During the duration of my prior case, my ongoing monthly mortgage payment fluctuated constantly and at times, I was unsure how I would be able to afford the increased monthly payments to the trustee."
  - 3. "With the assistance of my counsel, I filed a new Chapter 13 plan which, as informed by my counsel, was a 'loan modification' plan and its success was contingent on the approval of a loan modification."

4. “I applied for a loan modification under the terms of the Plan but, unfortunately, was denied.”

B. Declaration ¶ 9—

1. “I am filing the current bankruptcy and plan in order to cure my current pre-petition arrears and keep the residence my daughter and I live in.
2. “Since the dismissal of my last case, I have worked with my attorney to prepare, complete and file a full petition with Chapter 13 plan.”
3. “It has been explained to me that the plan filed is not premised on a loan modification and I must make all monthly payments to the trustee so he may pay my ongoing mortgage payment directly to the lender.”
4. “I have also been informed that I am free to apply for, and seek the Court’s consent if conditionally approved, a loan modification at any point during my bankruptcy.”

The court notes that this testimony is curious, as Debtor expressly states that he is not filing a “loan modification plan,” but one in which he will cure the arrearage and make all the current monthly mortgage payments. It appears that quite possibly Debtor’s secret plan is to just treat this as a “loan modification plan.”

Declaration, Dckt. 10.

#### **REVIEW OF SCHEDULES AND STATEMENT OF FINANCIAL AFFAIRS IN CURRENT BANKRUPTCY CASE**

The Chapter 13 Plan filed in this case requires Debtor to make a \$3,290.00 per month plan payment for sixty months. Dckt. 5. From these payments Debtor will first pay \$6,000.00 to Debtor’s counsel (no pre-petition retainer having been paid) and \$13,828.00 for Chapter 13 Trustee’s fees (estimated at 7% of the plan payments).

For Class 1, Debtor provides for making a \$1,982.68 current monthly mortgage payment and a \$701.04 monthly payment on a \$46,862.48 arrearage on this claim secured by Debtor’s residence. This appears to be the loan for which a modification was denied.

#### **REVIEW OF PRIOR BANKRUPTCY CASE**

At this juncture, Debtor’s testimony that “my ongoing monthly mortgage payment fluctuated constantly and at times, I was unsure how I would be able to afford the increased monthly payments to the trustee” rings in the court’s ears. Under the Original Plain in the prior case, Debtor was required to pay only a \$1,030.00 then current monthly mortgage payment and only a \$150.00 payment for an arrearage of only

\$15,228.68. 12-33903; July 30, 2012 filed Chapter 13 Plan, Dckt. 5. The Debtor was unable to make those payments or the other regular payments that came due on the adjustable rate mortgage.

On December 2, 2014, Debtor filed a proposed modified plan that increased the current monthly mortgage payment to \$1,510.18 and listed the arrearage on the claim to be \$17,754.01, \$2,500.00 greater than when the Debtor started making the payments through the plan more than two years earlier. *Id.*; Proposed Modified Plan, Dckt. 61. The Additional Provision further provided that Debtor's plan payments will step up to \$3,236.73 beginning January 25, 2015 (the month after the Proposed Modified Plan was filed).

The court denied the Motion to Confirm the Proposed Modified Plan in the prior case, with the court's findings and conclusions including the following:

- A. "A review of the Schedules and the Amended Schedules shows that Debtor may not be able to afford the step-up in plan payments under the proposed Plan. As the Debtors finances are currently presented, the Debtor will be unable to make the plan payments starting on the 41st month under the Debtors current disposable income."
- B. "As to the third objection, the Debtor has not provided information as to what happened to the business expenses and why there is a change in Debtors monthly income on the Amended Schedule J. The court, looking only at the Schedules filed, finds that the discrepancy in the income listed on Schedule I and Amended Schedule J and the absence of the business expenses on the Amended Schedule J raises sufficient feasibility concerns of the proposed plan that the court cannot confirm the Plan."
- C. Debtor failed to file supplemental pleadings, notwithstanding the court continuing the hearing, to file supplemental pleadings to address this issue.

*Id.*; Civil Minutes.

In June 2015, Debtor filed a Proposed Second Modified Plan. *Id.*; Dckt. 86. This was three years into the prior bankruptcy case. This Second Modified Plan no longer provided for payment of the current monthly mortgage installment and the cure payments, but provided that Debtor would seek a loan modification, make adequate protection payments of \$1,046.66, and if the loan modification was denied, the creditor was granted relief from the automatic stay to foreclose on the collateral (Debtor's residence).

The court granted the motion to confirm the Second Modified Plan, which provided that either the creditor would voluntarily agree to a loan modification or the creditor would be allowed to foreclose on its collateral. *Id.*; September 3, 2015 Confirmation Order, Dckt. 98.

On August 24, 2016, Debtor filed an Ex Parte Motion to Dismiss the prior Chapter 13 case. *Id.*; Dckt. 99. The Motion merely states that Debtor wants to dismiss the Chapter 13 case (which dismissal must be requested in good faith, *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008)). The court granted the Debtor's request that he no longer wanted to continue in a bankruptcy case and dismissed the prior case. *Id.*; Order, Dckt. 101.

## REVIEW OF SCHEDULES IN CURRENT CASE

In the current Plan, Debtor now lists Creditor having a pre-petition arrearage of \$46,862.48—a tripling (\$30,000 increase) of the pre-petition arrearage during the prior bankruptcy case filed in 2012. Debtor’s declaration offers no testimony how or why this \$30,000 arrearage occurred and why it will not continue. Debtor also offers no testimony as to why, having to give up in the prior case and commit to either a loan modification or allowing the Creditor to foreclose, Debtor can now make a monthly mortgage and arrearage payment totaling \$ 2,603.72.

On Schedule D in this case, Debtor lists Wells Fargo Bank, N.A. having a \$334,642.57 claim secured by Debtor’s residence, which Debtor states has a fair market value of \$431,613.00. Schedule D, Dckt. 1 at 21. On Schedule D in the prior bankruptcy case Debtor stated under penalty of perjury that the Wells Fargo Bank, N.A. claim was in the amount of \$246,975. 12-33903; Dckt. 1 at 14. Since the filing of the prior bankruptcy case, the effect of the prior bankruptcy case has caused this debt to more than double.

On Schedule I in this case, Debtor lists having \$3,522.33 in net business income, and then an additional “Anticipated Business Income” of \$800.00 per month. Dckt. 1 at 33. In his prior bankruptcy case, though Debtor determined that filing a Supplemental Schedule J in June 2015 in the prior case was necessary, he did not update the income information and continued to present to the court that the original 2012 income information was accurate. In the only Schedule I filed in the prior case, Debtor stated under penalty of perjury that Debtor had monthly net business income of \$2,741.00 and additional “anticipated business income” of \$800.00 a month. 12-33903; Dckt. 1 at 22. The business expenses are shown in Attachment A to Schedule J in the prior case listing expenses of \$906.00. *Id.* at 25. No income taxes or self employment taxes are shown on Schedules I and J in the prior case.

Jumping to Supplemental Schedule J filed in the prior case on June 22, 2015, no business expenses or taxes (income or self employment) are listed. *Id.*, Dckt. 82. On Supplemental Schedule J Debtor lists his income at \$2,634.00 (which indicates that there is no “additional business income”), and after his stated monthly expenses of \$2,406.66, Debtor had only \$228.17 of monthly net income. To get to that number, Debtor provided for making only a \$1,046.66 payment on the Wells Fargo Bank, N.A. secured claim. Debtor also states under penalty of perjury that he has, for Debtor and a teenage daughter: (1) no health insurance expense, (2) no medical or dental expenses, and (3) only \$20.00 per month clothing and laundry expense.

On Debtor’s Schedule I in this case, he states under penalty of perjury that his monthly net business income has jumped to \$3,522.33 (a 46% increase from the June 2015 Amended Schedule J in the prior case). On top of this, Debtor states that there is, as in the prior case, an additional \$800.00 in “additional business income.” If true, then Debtor’s income would rise to \$4,322.33, an 80% increase over what Debtor stated it was under penalty of perjury in June 2015.

Again, no provision is made for payment of income and self employment taxes on Schedules I and J filed in this case. Dckt. 1 at 33–36.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that in 2016 the gross income from his business has been \$0.00 through the first nine and one-half months. *Id.* at 38–39;

Statement of Financial Affairs Part 2, Question 4. For 2015 Debtor states that he had gross income of \$67,820 in income from his business. *Id.* He further states that in 2014 he had \$68,962 in gross income from his business. *Id.* Even with that (as opposed to the \$0.00 in 2016), Debtor could not make the lower payments required under the Chapter 13 Plans in the prior case. On Schedule J in the current case, for Debtor and his twenty-year-old daughter, Debtor lists only \$1,030 in expenses. *Id.* at 36. With only \$1,000.00 in expenses, Debtor purports to have \$3,292.33 in Monthly Net Income to fund a plan. To get to only \$1,000.00 in expenses, Debtor states under penalty of perjury the questionable expenses of: (1) \$0.00 for self-employment and income taxes; (2) \$350.00 for food and housekeeping supplies; (3) \$20.00 for clothing and laundry; (4) \$170.00 for transportation (repairs, registration, fuel); (4) \$0.00 for health insurance; (5) \$0.00 for medical and dental expenses; and (6) \$0.00 for entertainment expenses.

These expense statements are not credible, especially in light of the Debtor's higher (and still questionable) expenses stated in June 2015 under penalty of perjury. Debtor's income stated is questionable, not only in light of that he lists "anticipated business income of \$800" in addition to the business income of \$3,522.33 per month, but that he states under penalty of perjury having \$0.00 income in 2016 on the Statement of Financial Affairs.

Debtor has repeatedly proven that he cannot make the current monthly mortgage and arrearage payments. Debtor defaulted under two different confirmed plans in the prior case. Then, in the third confirmed plan, Debtor committed to pursuing a loan modification and if denied, to allow the creditor to foreclose.

Debtor's "reorganization" efforts have caused the secured claim of Wells Fargo Bank, N.A. to more than double over what Debtor originally stated. Debtor has tripled the arrearage, with it now eclipsing \$45,000.00.

At best, Debtor has used the Chapter 13 process in his prior case to avoid making the mortgage payments, but continue to live in a house he cannot afford.

Debtor has not provided the court with clear and convincing evidence to rebut the presumption that this Chapter 13 case, filed after Debtor failed multiple times in the prior case over four years, is not filed in bad faith.

The motion is denied, and the court does not extend the automatic stay, which is **terminated as to the Debtor** by operation of law pursuant to 11 U.S.C. § 362(c)(3)(B). FN.1.

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FN.1. As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to the Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4) Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate expressly provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate), and the bankruptcy case. While terminated as to the Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only the Debtor.  
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The court shall issue a minute order 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 Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is denied, and the court does not extend the automatic stay as to the Debtor, which shall terminate as to the Debtor by operation of law pursuant to 11 U.S.C. § 362(c)(3)(A). The court does not make any order affecting the automatic stay as it exists pursuant to 11 U.S.C. § 362(a) for the bankruptcy estate and property of the bankruptcy estate.

44.    [14-23972-E-13](#)        **THOMAS BURGESS AND**                    **MOTION TO DISMISS CASE**  
      DPC-2                    **PATRICIA VIRDEN**                    **10-19-16 [51]**  
                                  **Eammon Foster**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

45. [13-30273-E-13](#)      **ELIAS ORTIZ**  
DPC-5                      **Scott Johnson**

**MOTION TO DISMISS CASE**  
**10-18-16 [125]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 26, 2016, Dckt. 132; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 132, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.

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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 18, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,120.00 delinquent in plan payments (with another \$3,060.00 coming due before the hearing), which represents multiple months of the \$3,060.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**Tentative Ruling:** 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.

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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 19, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 13, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **DEBTOR'S OPPOSITION**

Jessica Van Horn ("Debtor") filed an Opposition to the Trustee's Motion on November 2, 2016. Dckt. 39. The Debtor states that an Amended Plan will be filed well before the hearing on the Trustee's Motion. Unfortunately for the Debtor, a promise to act is not evidence of such.

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

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

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

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

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

48. [15-22182](#)-E-13      **RUTH CLARK**      **MOTION TO DISMISS CASE**  
DPC-4                      **Peter Macaluso**                      **10-17-16 [178]**

**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.

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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 17, 2016. By the court’s calculation, 30 days’ notice was provided. 28 days’ notice is required.

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

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

**Dismissal of Motion Filed by Trustee**

The Chapter 13 Trustee filed an Ex Parte Motion to Dismiss the pending Motion on November 7, 2016. Dckt. 185. In requesting the Ex Parte dismissal of the current motion, the Chapter 13 Trustee states that Debtor and Debtor’s counsel delivered a proposed order confirming the Chapter 13 Plan (sometime between the November 2, 2016 filing of Debtor’s Opposition and the November 7, 2016 filing of the Trustee’s Ex Parte Motion to dismiss the present Motion).

**Conduct of Debtor**

This case has a long, difficult history, with Debtor seemingly trying to get the case dismissed and lose her equity in her home. The court issued its order granting the Debtor’s Motion to Confirm the Amended Chapter 13 Plan on August 29, 2016. Order, Dckt. 177. Much information was begrudgingly provided by Debtor and her counsel. The fact that Carey Thomas, her supposed financial benefactor, held a power of attorney was not disclosed until late in this case.

Debtor provided the court with patently inaccurate financial information concerning her expenses. The court addresses this incomplete (and inaccurate) statement of expenses in the Civil Minutes from the confirmation hearing. August 23, 2016 Civil Minutes, Dckt. 175 at 7– 8. Notwithstanding the lack

of candor, truthfulness, and accuracy by the Debtor and her allies, the court confirmed the plan that provides for Debtor to sell her property and save her homestead exemption. In the Civil Minutes, the court stated the additional language that Mr. Carey agreed to in open court.

Notwithstanding the Ruling of the court on the Motion to confirm and Mr. Carey committing to the order terms, counsel for Debtor did not submit to the Chapter 13 Trustee the order confirming the Plan. A week passed, then two weeks. Weeks turned into months, until the Trustee filed the present Motion to Dismiss on October 17, 2016. Then, on November 2, 2016, seventy-one days after Mr. Carey agreed to the terms of the order in open court, Debtor's counsel advises the court that "Mr. Thomas (misidentifying the Debtor's benefactor, which causes the court to believe that Debtor's counsel did not prepare this pleading) is seeking independent legal counsel on the signing of the Order. . . ." Opposition, Dckt. 183. Why seventy-one days after the hearing and stating on the record his agreement was he only then seeking "independent legal counsel" is unstated.

From this delay and inaction by Debtor and Debtor's counsel, the court concludes that Debtor, Debtor's counsel, and Mr. Carey (who states he holds a power of attorney for Debtor) are not prosecuting this case in good faith. Mr. Carey has demonstrated that his word is not his bond, and is looking for (and is likely to flee) his legal obligations to Debtor and under the Plan.

That the Debtor, Debtor's counsel, and Mr. Carey did not promptly act to get the order confirming the plan in place and acted, begrudgingly, only on the eve of hearing on this present motion is consistent with their prior improper conduct in this case. It further demonstrates that the Debtor, and Debtor's counsel, have no good faith intention to proceed with the marketing and sale of the real property as provided in the Plan, but are working only to mislead the court as they ignore their obligations.

As stated in the Civil Minutes for the August 23, 2016 Confirmation Hearing:

"At the hearing, Mr. Carey stated on the record his concurrence with the above mandatory injunction. It was also stated that the Debtor now believes that it is in her interests to sell the home, will be employing (with authorization from the court) a real estate broker, and listing her home for sale (which sale shall be approved by the court)."

Dckt. 175, p. 12.

In the eighty-three days from stating that in open court and the November 14, 2016 hearing on this Motion to Dismiss, no real estate broker has been engaged to market the property.

## **RULING**

The court denied the Chapter 13 Trustee's Ex Parte Motion to Dismiss the Motion before the court. While the court appreciates the Trustee's compassion and the court's preference to allow good faith debtors and their attorneys every opportunity to prosecute a Chapter 13 plan, in this case that compassion is misplaced.

The court grants the Chapter 13 Trustee's Motion to Dismiss this bankruptcy case. As addressed above and in the court's prior rulings, the Debtor, Debtor's counsel, and Mr. Carey have been less than honest and forthright in the prosecution of this case. Having saved the Debtor from foreclosure by the thinnest of hairs, a good faith debtor, good faith counsel, and good faith benefactor would quickly have gotten the order confirming the plan in place and a real estate broker employed. Mr. Carey had already stated in open court that he was obligated to provide the plan funding for sixty months. The order confirming as required by the court does nothing more, other than make that promise legally enforceable. Mr. Carey was unwilling to allow that order to proceed until, once again, forced by the Chapter 13 Trustee. Such does not bode well for the performance of a plan.

The court shall issue a minute order 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 Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt.185, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Trustee's Motion to Dismiss the Chapter 13 Case is granted, and the bankruptcy case is dismissed.

49. [15-20683](#)-E-13      **DEREK WOLF**  
DPC-3                      **Peter Macaluso**

**MOTION TO DISMISS CASE**  
**10-18-16 [54]**

**WITHDRAWN BY M.P.**  
**DEBTOR DISMISSED: 10/16/2016**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

**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.

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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 18, 2016. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,360.00 delinquent in plan payments (with another \$525.00 coming due before the hearing), which represents multiple months of the \$525.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR’S “OPPOSITION”**

Randall Owens and Ryan Waters (“Debtor”) filed a “Reply” to the Trustee’s Motion on November 2, 2016, which the court interprets to be an Opposition to the Motion. Dckt. 39. The Debtor promises to file, set, serve, and be current under a modified plan on or before the hearing on this matter. A review of the docket shows that no such plan has been filed. Unfortunately for the Debtor, a promise to act is not evidence of such.

Debtor fails, or refuses, to provide any testimony in opposition to the present Motion. Instead, Debtor’s counsel only argues that Debtor will file a modified plan before the hearing on the Motion to Dismiss. When a party is unwilling to provide the court with any evidence explaining the reason for the default and how a debtor can make up three plan payments in one month, the court is not inclined to just “assume it is all on the up and up.”

This is not the first bankruptcy go-round for Debtor Randall Owens and his current attorney. Randall Owens was a Chapter 13 debtor in Bankr. E.D. Case No. 12-24555 from its filing in March 2012 and its dismissal on December 3, 2015. That case was dismissed due to defaults in plan payments.

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

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

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

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

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

51. [12-36688](#)-E-13      **DONALD TO AND KAREN CAO**      **MOTION TO DISMISS CASE**  
DPC-3                      **Kristy Hernandez**                      **10-19-16 [128]**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on November 9, 2016, Dckt. 135; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 135, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

52. [13-29395](#)-E-13      **FRANK/GRACE MURPHY**      **MOTION TO DISMISS CASE**  
DPC-5      **Chad Johnson**      **10-18-16 [90]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

53. [15-27295](#)-E-13      **ERROL/ALITA MERCADO**      **MOTION TO DISMISS CASE**  
DPC-2      **Richard Jare**      **10-18-16 [63]**

**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.  
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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 18, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$900.00 delinquent in plan payments (with another \$750.00 coming due before the hearing), which represents multiple months of the \$750.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **DEBTOR'S OPPOSITION**

Errol Mercado and Alita Mercado ("Debtor") filed an Opposition to the Trustee's Motion on November 2, 2016. Dckt. 70. The Debtor claims to have given a money order in the sum of \$900.00 to

Debtor's Attorney, who delivered the payment to the Trustee's office. Debtor also intends to modify the Plan to stabilize the budget and expects to have a Motion to Modify along with a Declaration in support filed shortly.

Debtor has provided a copy of a money order issued on November 1, 2016, for \$900.00 and addressed to the Trustee. Exhibit, Dckt. 68. The court does not have any evidence that such funds have been received by the Trustee. Further, a review of the docket shows that while a Modified Plan has been filed, no Motion to Confirm has been filed, no supporting pleadings, and no hearing has been set for confirmation.

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

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

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

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

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

54. 16-24396-E-13      **ROBERT MACBRIDE**      **MOTION TO DISMISS CASE**  
DPC-1                      Pro Se                      10-17-16 [55]

**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.

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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 17, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$5,742.00 delinquent in plan payments (with another \$2,871.00 coming due before the hearing), which represents multiple months of the \$2,871.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

## **DEBTOR'S OPPOSITION**

Robert MacBride ("Debtor") filed an Opposition to the Trustee's Motion on November 2, 2016. Dckt. 59. The Debtor states that the Trustee does not have an obligation to make any adequate protection payments to a creditor until a proof of claim has been filed and that the Trustee is required to pay the arrears owed to the creditor holding a secured claim before he can make payments to either the priority unsecured creditor or the unsecured creditor, which would mean that there has been no unreasonable delay to those creditors.

Debtor does not dispute that he has not made plan payments and indicates that the arrearage payment will be made prior to the hearing on November 16, 2016. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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 16, 2016 hearing is required.

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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 19, 2016. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

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

**The hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,600.00 delinquent in plan payments (with another \$650.00 coming due before the hearing), which represents multiple months of the \$650.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Further, the Trustee argues that Debtor’s Motion to Confirm and Declaration in support state that the Debtor has a trial loan modification of \$2,068.31 per month. The Trustee is not aware of any motion to approve a loan modification agreement and believes that Debtor may have violated the Plan.

The Trustee also moves for dismissal on grounds that Debtor has submitted 2015 tax returns to the Trustee that disclose the Debtor’s average monthly gross income from wages in 2015 as \$10,180.00, which is \$927.00 greater than reported on Schedule I. Additionally, the 2015 tax return disclosed that the Debtor received \$29,215.00 in early distributions from qualified retirement plans in 2015. The Order Confirming Plan requires Debtor to immediately notify the Trustee, in writing, of any employment change, and the Plan limits Debtor’s ability to transfer property.

#### **DEBTOR’S “RESPONSE”**

Irvin White and Theresa White (“Debtor”) filed a “Response” to the Trustee’s Motion on November 1, 2016, which the court interprets to be an Opposition to the Motion. Dckt. 92. The Debtor states that they are planning to file a modified plan before the hearing date on this Motion. Additionally, Debtor’s counsel indicates that he will be unavailable from November 14, 2016, through November 26, 2016, for personal reasons and requests that the hearing on this matter be continued until at least the court’s next dismissal calendar.

## **DEBTOR'S SUPPLEMENTAL "RESPONSE"**

Debtor filed a Supplemental Response on November 8, 2016. Dckt. 94. Debtor claims to be current on all plan payments. Debtor's Attorney now represents that he will be unavailable from November 9, 2016, through November 27, 2016. Debtor requests that the Motion be denied or continued to January 18, 2017.

## **TRUSTEE'S REPLY**

The Trustee filed a Reply on November 9, 2016. Dckt. 96. The Trustee states that he has no objection to continuing the matter to January 18, 2017.

## **DISCUSSION**

The Trustee has not acknowledged whether or not Debtor is current under the Plan. Nevertheless, due to neither party objecting to continuing the matter, the hearing on the Motion is continued to 10:00 a.m. on January 18, 2017.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.

56.

[15-23397](#)-E-13  
DPC-3

JASON/SANDRA PERKINS  
Eric Schwab

MOTION TO DISMISS CASE  
10-26-16 [67]

**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.

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

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

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 26, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, specifically the 2015 tax return. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

57. [16-25998](#)-E-13      **GENEVIEVE BALDINI**      **MOTION TO DISMISS CASE**  
DPC-1                      **Scott Shumaker**                      **10-26-16 [18]**

**WITHDRAWN BY M.P.**

**Final Ruling:** No appearance at the November 16, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**