

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 21, 2015 at 10:00 a.m.

1. **13-28203-E-13** LANCE/LISA MCKINNEY MOTION TO DISMISS CASE
DPC-1 Jason Borg 12-15-14 [[54](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 15, 2014. Dckt. 54

The Trustee argues that the Debtor is in material default of § 5.03 of the Plan because the Plan will complete in 68 months opposed to 60 months proposed. The Trustee argues this is in violation of 11 U.S.C. § 1322(d).

The Debtor filed an opposition to the instant Motion on January 7, 2015. Dckt. 59. The Debtor states that they have filed a First Modified Chapter 13 Plan on December 29, 2014 (Dckt. 58) which the Debtor state address the issues raised by the Trustee. The Debtor states that they will file a Motion to Confirm by January 12, 2015.

January 21, 2015 at 10:00 a.m.

To date, no such motion has been filed

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

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

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

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

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

2. [10-24808](#)-E-13 AMY HUYNH
Scott Johnson

MOTION TO DISMISS CASE
12-16-14 [[88](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$990.00 delinquent in plan payments, which represents multiple months of the

January 21, 2015 at 10:00 a.m.

- Page 2 of 56 -

\$495.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

3. [14-22409](#)-E-13 ROBERT/MARY LYTTLE MOTION TO DISMISS CASE
DPC-1 Lucas Garcia 11-17-14 [[77](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2014. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

The Trustee'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 September 9, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor filed a non-opposition on January 8, 2015. Dckt. 81

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.

4. [12-29412](#)-E-13 MICHELLE FRAZIER
Candace Brooks

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
11-26-14 [[59](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michelle Frazier ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 26, 2014. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees in this case (\$25.00 due on November 26, 2014).

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

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

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

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

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

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

5. [14-21319](#)-E-13 MARK/SARAH ANN HANSEN
DPC-1 Bonnie Baker

MOTION TO DISMISS CASE
1-5-15 [[67](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

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 October 28, 2014.

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

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

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

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

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

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

6. [14-26919](#)-E-13 RODERICK ROBBINS MOTION TO DISMISS CASE
DPC-3 Stephen Murphy 1-6-15 [[65](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 6, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$70.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 9, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

7. 12-41227-E-13 ALEKSAN/NELLI BARSEGHYAN MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 12-8-14 [[46](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

8. [12-36630](#)-E-13 LEO JENNINGS
George Burke

MOTION TO DISMISS CASE
12-15-14 [[95](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

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

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

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

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

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

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

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

9. [14-30130](#)-E-13 MICHAEL/MARCIA CLARK
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-15-14 [[30](#)]

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 Michael and Marcia Clark ("Debtors"), Trustee, and other parties in interest on December 15, 2014. The court computes that 37 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 December 9, 2014).

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

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

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

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

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

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

10. [13-27835](#)-E-13 JEFFREY/MONICA JACKSON MOTION TO DISMISS CASE
DPC-1 Kristy Hernandez 12-15-14 [[116](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the Motion to Dismiss to 10:00 a.m. on April 1, 2015.
--

The Trustee argues that the Debtors are in material default. The Debtors failed to provide for the Priority part of the claim of the Franchise Tax Board (Proof of Claim No. 6) in the amount of \$4,701.82. The Debtors failed to provide for the Priority part of the claim of the Franchise Tax Board (Proof of Claim No. 6) in the amount of \$163.15. Section 2.13 of the Plan makes this failure a breach of the Plan. The Debtors were provided a Notice of Filed Claims on January 28, 2014 (Dckt. 108) which listed the claims on page 5 and 6 as priority and not provided for in the Plan and indicated that a motion to modify was required.

Debtors filed an opposition to the instant Motion on January 7, 2015. Dckt. 120. The Debtors state that they acknowledge that their presently proposed chapter 13 Plan fails to account for payments to the Franchise Tax Board. However, Debtors argue that the root cause of the failure to propose a modification to their Chapter 13 Plan to account for these priority tax claims has been Debtors' secured mortgage lender's failure to provide accurate post-petition 1098s. It is Debtors' contention that they do not have any outstanding tax liability owing to Franchise Tax Board and that the Franchise Tax Board will be withdrawing and/or filing an amended Proof of Claim reducing the priority and general unsecured tax liability in this case to \$0.00.

Debtors request that the court continue the instant Motion to March 2015 to allow the Debtors the opportunity to determine the priority tax liability due, if any, and the opportunity to propose a modified plan if there is any tax liability.

At the request of the Debtors, the hearing is continued to 10:00 a.m. on April 1, 2015 to allow the Debtors the opportunity to review the tax records and propose a modified plan, if necessary

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

January 21, 2015 at 10:00 a.m.

- Page 12 of 56 -

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on April 1, 2015.

11. [14-30135](#)-E-13 JULIE COLLIS-DAVIS
David Foyil

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-15-14 [[37](#)]

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 Julie Collis-Davis ("Debtor"), Trustee, and other parties in interest on December 15, 2014. The court computes that 37 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 December 9, 2014).

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

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

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

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

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

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

12. [10-46337](#)-E-13 NATISA CAHAYAG MOTION TO DISMISS CASE
DPC-1 Mary Ellen Terranella 12-8-14 [[76](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

13. [14-25140-E-13](#) KEN JIMENEZ
DPC-3 Todd Peterson

MOTION TO DISMISS CASE
11-17-14 [[57](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 17, 2014. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

The Trustee'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 September 16, 2014. A review of the docket shows that Debtor has filed a new plan on September 15, 2014 (Dckt. 45) but has yet to file a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

14. [14-28243](#)-E-13 ISIDRO GRAGEDA
DPC-2 Thomas Gillis

MOTION TO DISMISS CASE
12-19-14 [[27](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

- Final Ruling:** No appearance at the January 21, 2015 hearing is required.

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 December 5, 2014).

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

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

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

- Final Ruling:** No appearance at the January 21, 2015 hearing is required.

January 21, 2015 at 10:00 a.m.

17. [09-43949](#)-E-13 ANTHONY KELLY
Nikki Farris

MOTION TO DISMISS CASE
12-16-14 [[100](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

18. [14-30249](#)-E-13 JOHN/JESSIE HEINRICHS
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-19-14 [[20](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on John and Jessie Heinrichs ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 19, 2014. The court computes that 63 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on November 14, 2014).

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

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

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

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

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

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

19. [14-28950](#)-E-13 JANET LYTLE
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-8-14 [[47](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Janet Lytle ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 8, 2014. The court computes that 44 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 December 3, 2014).

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

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

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

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

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

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

20. [14-28950](#)-E-13 JANET LYTLE
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-7-15 [[53](#)]

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 Janet Lytle ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 7, 2015. The court computes that 14 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 (\$75.00 due on January 5, 2015).

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

The court's docket reflects that the default in payment which is the subsection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$75.00].

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.

21. [14-28950](#)-E-13 JANET LYTTLE
DPC-1 Marc Caraska

MOTION TO DISMISS CASE
12-16-14 [[49](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$145.44 delinquent in plan payments, which represents less than a month of the \$185.22 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

22. [10-44161](#)-E-13 STEPHEN BARNETT
DPC-3 Curt Hennecke

MOTION TO DISMISS CASE
12-8-14 [[86](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on February 24, 2015.
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,882.84 delinquent in plan payments, which represents multiple months of the \$2,441.42 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed an opposition to the instant Motion on January 7, 2015. Dckt. 90. Debtor states that he will file a First Modified Plan along with a Motion to Confirm. The Debtor states due to the fluctuating nature of his legal recruitment position and his status as sole guardian and caregiver to his children, his expenses has fluctuated and caused him to miss plan payments. The Debtor argues that due to the substantial amount of time and money invested in this case, the Motion should be dismissed.

A review of the docket shows that the Debtor has filed a Modified Plan and a Motion to Confirm on January 9, 2015. Dckt. 93 and 95. The Motion to Confirm is set for hearing on February 24, 2015.

The court has reviewed these pleadings. Beginning with the Motion to Confirm, it fails to state the grounds for confirmation of a modified plan pursuant to 11 U.S.C. § 1329 (which includes the requirements of 11 U.S.C. §§ 1325 and 1322). Dckt. 96. A review of the Declaration in support of the Modified Plan shows that it includes factual, personal knowledge testimony of events which have caused the default, but then provides the court with the declarants personal findings of fact and conclusions of law (such as testifying that the plan is proposed "in good faith," the petition was filed "in good faith," that debtor "will be able to make the payments under the plan and comply with the plan," the plan provides to pay all secured creditors as provided in § 1325(a)(5)(B) [without stating the treatment or showing that Debtor knows the legal requirements of that Bankruptcy Code section], and unsecured claims will be paid "what they would receive in the event of a Chapter 7 liquidation). The Debtor needs to testify to fact, based on his personal knowledge, from which the court may then make the necessary findings

of fact and conclusions of law.

The court continues the hearing on the Motion to Dismiss to 3:00 p.m. on February 24, 2015, to be heard in conjunction with the Motion to Confirm the Modified Plan. On or before January 30, 2015, the Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental pleadings consisting of (1) a supplement to the motion (not an amended motion) which states the grounds upon which Debtor basis confirmation of a modified plan pursuant to 11 U.S.C. § 1329 and a supplemental declaration in which the Debtor provides personal knowledge testimony from which the court may make the necessary findings of fact and conclusions of law to support confirmation of the proposed Modified Plan. Responses, if any, shall be filed and served on or before February 10, 2015.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on February 24, 2015.

IT IS FURTHER ORDERED that on or before January 30, 2015, the Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental pleadings consisting of (1) a supplement to the motion (not an amended motion) to confirm the modified plan (DCN: CFH-4) which states the grounds upon which Debtor basis confirmation of a modified plan pursuant to 11 U.S.C. § 1329 and a supplemental declaration in support of that Motion in which the Debtor provides personal knowledge testimony from which the court may make the necessary findings of fact and conclusions of law to support confirmation of the proposed Modified Plan. Responses, if any, shall be filed and served on or before February 10, 2015.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 8, 2014. By the court's calculation, 44 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 xxxx .
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,280.00 delinquent in plan payments, which represents multiple months of the \$328.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTORS' OPPOSITION

On January 20, 2015, the Debtors filed an ex parte application shortening time to respond to Trustee's Motion to Dismiss. Dckt. 156.

The Debtors filed an opposition to the instant Motion on January 20, 2015. Dckt. 158. The opposition states:

1. In late December, Debtors only vehicle went into the shop again and it was determined that the cost to fix the vehicle exceeded what the Debtors were able to pay., It was also clear that Debtors were not going to be able to get current on their plan payments prior to the dismissal date without a motion to modify plan.
2. Debtors discussed the need to surrender the current vehicle and

the procedure for applying for permission to purchase a new vehicle. Debtors began working with Paul Blancos, but were uncomfortable with the sales practice of said dealer, and determined that at this time, they could not feasibly make a car payment. Debtors made arrangements to borrow parent's vehicle until sometime after the completion of this plan.

3. Debtors have filed a motion modifying their Chapter 13 plan in an effort to get current and complete the final eight months of the plan.

DISCUSSION

At the hearing,-----

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

24. [14-27264-E-13](#) DENNIS JACOPETTI
DPC-1 Richard Jare

MOTION TO DISMISS CASE
12-18-14 [[60](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 December 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

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

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

for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee also argues that the Debtor has failed to provide proof of social security number at the First Meeting of Creditors.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 December 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

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 December 9, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,505.00 delinquent in plan payments, which represents multiple months of the \$1,835.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtors filed a response to the instant Motion on January 7, 2015. Dckt. 69. The Debtors state that due to the possibility that the Debtors will not be current after January 7, 2015 and would not be able to make the necessary payment by that time, Debtors' counsel is filing this response in order to afford the Debtors time to make the payment without a payment being turned away by the Trustee's office.

Unfortunately, the Debtors remain delinquent on 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].

28. [10-47375-E-13](#) DAN/JOSELYN HOWARD MOTION TO DISMISS CASE
 Scott Shumaker 12-16-14 [[64](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny the Motion to Dismiss without prejudice.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,576.00 delinquent in plan payments, which represents multiple months of the \$471.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtors file a reply to the instant Motion on January 8, 2015. Dckt. 68. The Debtors state that they will file a Motion to Modify Plan extending the Plan. The Debtors request the court give the Debtors the opportunity to correct the deficiency in this case so as to ensure Plan completion.

The Debtors filed a response to the instant Motion on January 8, 2015. Dckt. 68. The Debtors state that they will file a Motion to Modify Plan extending time.

On January 14, 2015 a proposed Modified Plan and Motion to Confirm were filed. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 70, 73. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to

support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Debtor having acted to modify the plan and doing so in a manner consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the Motion is denied without prejudice.

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

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

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

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

IT IS FURTHER ORDERED that on or before January 31, 2015, the Debtor shall file supplemental pleadings and evidence in support of the Motion to Confirm Modified Plan (DCN: SS-4) upon which the allegation that the creditors with general unsecured claims will receive at least as much as they would through a Chapter 7 liquidation. Such supplemental pleadings shall be served on the Chapter 13 Trustee and U.S. Trustee.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on September 30, 2014.

The Trustee seeks dismissal of the case on the basis that Samuel and Ethel Smith ("Debtors") are \$9,100.00 delinquent in plan payments, which represents multiple months of the \$3,275.00 plan payment. Another monthly payment will come due before the hearing date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

NOVEMBER 14, 2014 HEARING

The Debtor appeared at the hearing, advising the court that her attorney was disbarred in November 2013. Debtor stated that she has \$9,000.00 to cure most of the arrearage, and would have the rest cured next month.

Debtor will seek to engage counsel to assist in the further prosecution and completion of this case.

The court continued the hearing to afford Debtor this opportunity.

DISCUSSION

To date, no new pleadings have been filed in the case since the order continuing the instant Motion. Particularly, no Motion to Substitute has been file nor is there any evidence a new attorney has been retained.

The Debtor appears to remain delinquent.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,194.01 delinquent in plan payments, which represents multiple months of the \$1,200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore the Trustee argues that the Plan will be completed in 82 months as opposed to 60 months proposes, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee also states that the Class 1 mortgage arrears claim was \$11,173.99 greater than scheduled.

Debtors filed an opposition to the Motion to Dismiss on September 29, 2014. Dckt. 28. Debtors argue that they will be current with their plan payments prior to the hearing and will modify their plan to provide for the correct arrearage amount on their home or, alternatively, object to the mortgage arrearage claim.

OCTOBER 15, 2014 HEARING

The court continued the hearing to allow Debtor to come current with their plan payments and to modify plan to correct arrearage amount on their mortgage. Dckt. 30.

DISCUSSION

To date, no new pleadings have been filed in the case since the order continuing the instant Motion. Particularly, no modified plan nor Motion to Confirm has been filed.

The Debtor appears to remain delinquent.

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

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

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

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

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

31. [14-28676-E-13](#) GIANNE/RUBY-ROSE APURADO MOTION TO DISMISS CASE
DPC-1 Julius Engel 12-16-14 [[32](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted and the Chapter 13 case is dismissed.

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).

The Trustee further asserts that the Debtor cannot make the payments under the plan previously filed in this case or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor proposes to value the secured claim of Marriott Resorts Vacation Club, but has failed to file a Motion to Value to date.

Debtor has not filed an opposition to the Motion. FN.1.

FN.1. The court notes that while not opposing the Motion, Debtor filed on December 26, 2014, a motion to confirm a Chapter 13 plan. The filing of such a motion appears to be of little significance in light of Debtor having no opposition to the Motion to Dismiss. Additionally, the motion to confirm a plan states that Debtor is seeking to confirm a Plan filed on August 27, 2014. There is no Chapter 13 Plan filed on August 27, 2014 in this case.

The court notes that a Chapter 13 Plan was filed on September 19, 2014, almost a month later. Dckt. 24. That Plan provides for the secured claim of Marriott Resorts Vacation Club to be paid at a reduced amount based on the

value of the collateral (an 11 U.S.C. § 506(a) valued secured claim). A review of the Docket discloses that no Motion to Value has been filed.

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. [14-29978-E-13](#) FELICISIMO SUNGA
DPC-1

MOTION TO DISMISS CASE
12-12-14 [[29](#)]

Final Ruling: No appearance at the January 21, 2105 hearing is required.

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

33. [10-41581](#)-E-13 DAVID/TAVIA CLARK
DPC-5 Chad Johnson

MOTION TO DISMISS CASE
12-8-14 [[94](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

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

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

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

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

34. [14-28181](#)-E-13 JAYMESON MITCHELL AND MOTION TO DISMISS CASE
DPC-2 ELIZABETH GLASSMAKER-MITCHELL 12-19-14 [[40](#)]
Julius Engle

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,882.00 delinquent in plan payments, which represents multiple months of the \$3,441.00 plan payment. The next scheduled payment of \$3,441.00 was due on December 25, 2014. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 21, 2014. Dckt. 28.

Debtor did not file any opposition to the Motion to Dismiss. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

35. [10-28282-E-13](#) **FRANCISCO/ELNORAS GARCIA** **MOTION TO DISMISS CASE**
 Peter Macaluso **12-16-14 [[145](#)]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 16, 2014. By the court's calculation, 36 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).

<p>The court's decision is to grant the Motion to Dismiss and dismiss the case.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,876.00 delinquent in plan payments, which represents multiple months of the \$675.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtors responded to the instant Motion on January 6, 2015. Dckt. 149. The Debtors state that they will be current under the terms of the plan on or before the date of the hearing, which will include payments for December.

Unfortunately, to date, there is no evidence that Debtors have cured the delinquencies.

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

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

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

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

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

36. [14-31583](#)-E-13 JON BANISTER
Gordon Bones

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-9-14 [[11](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jon Banister ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 11, 2014. The court computes that 41 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay installment fee in the amount of \$310.00.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on December 15, 2014 (Dckt. 13), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order 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 as moot, and no sanctions are ordered.

37.

[14-29184](#)-E-13 RAVEN TRAMMELL
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-16-14 [[47](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Raven Trammell ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 16, 2014. 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 December 11, 2014).

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

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

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

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

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

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

38. [14-30284](#)-E-13 ANGELA CONWAY
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-20-14 [[18](#)]

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 Angela Conway("Debtor"), Trustee, and other parties in interest on November 20, 2014. The court computes that 62 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 November 17, 2014).

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

The court's docket reflects that the default in payment which is the subsection 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.

39. [14-30284](#)-E-13 ANGELA CONWAY
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-22-14 [[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:

The Order to Show Cause was served by the Clerk of the Court on Angela Conway ("Debtor"), Trustee, and other parties in interest on December 22, 2014. The court computes that 30 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 December 15, 2014).

<p>The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.</p>

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Angela R. Conway, Debtor's Attorney, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,798.00.00 delinquent in plan payments, which represents multiple months of the \$2,899.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

41. [14-30186](#)-E-13 EVANGELINA GARIBAY
Charnel James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-14 [[39](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Evangelina Garibay ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 18, 2014. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on December 15, 2014).

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

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

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

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

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

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

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 19, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the Debtors's withdrawal of Motion to Confirm on October 14, 2014, along with the proposed amended Plan filed on September 9, 2014. Dckt. 120 and 121.

The Debtors filed an opposition to the instant Motion on December 21, 2014. Dckt. 139. The Debtors state that they filed an amended plan and Motion to Confirm on December 21, 2014. The hearing on the motion is set for February 3, 2015.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 133, 135. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Debtor having acted to modify the plan and doing so in a manner consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the Motion is denied without prejudice.

Therefore, no cause exists to dismiss this case. The motion is denied without prejudice.

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

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

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

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

43. [10-28891](#)-E-13 RAFAEL PEREZ
DPC-5

MOTION TO DISMISS CASE
12-22-14 [[34](#)]

Final Ruling: No appearance at the January 21, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 22, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$700.00 delinquent in confirmed plan payments, which represents multiple months of the \$300.00 plan payment. Failure of the Debtor to make plan payments is a material default to the term of the confirmed plan and cause for dismissal. 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

44. [14-27793](#)-E-13 ROMY OSTER
 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-18-14 [[47](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Romy Oster ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on November 20, 2014. The court computes that 32 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).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on November 17, 2014 (Dckt. 50), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order 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 as moot, and no sanctions are ordered.

45. [14-29493](#)-E-7 RODNEY/CHANDRA LAMBERT ORDER TO SHOW CAUSE - FAILURE
 Richard Jare TO PAY FEES
 12-1-14 [[100](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rodney and Chandra Lambert ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 3, 2014. The court computes that 49 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 November 24, 2014).

The Order to Show Cause is discharged as moot.

The case having been converted to a Chapter 7 on January 2, 2015 (Dckt. 118), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order 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 as moot, and no sanctions are ordered. The Clerk's Office shall process the case and the Debtor shall pay all fees as proper for one converted from Chapter 13 to one under Chapter 7.

46. [14-29493](#)-E-7 RODNEY/CHANDRA LAMBERT
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-29-14 [[116](#)]

Final Ruling: No appearance at the January 21, 2012 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rodney and Chandra Lambert ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on December 31, 2014. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on December 22, 2014).

The Order to Show Cause is discharged as moot.

The case having been converted to a Chapter 7 on January 2, 2015 (Dckt. 118), the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court shall issue a minute order 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 as moot, and no sanctions are ordered. The Clerk's Office shall process the case and the Debtor shall pay all fees as proper for one converted from Chapter 13 to one under Chapter 7.

47. 14-29493-E-7 RODNEY/CHANDRA LAMBERT
DPC-2

MOTION TO DISMISS CASE
11-17-14 [[92](#)]

Final Ruling: No appearance at the January 21, 2014 hearing is required.

The case having previously been converted from a Chapter 13 to Chapter 7 on January 2, 2015 (Dckt. 118), the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously converted (Dckt. 118), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been converted from a Chapter 13 to Chapter 7.

48. [14-31697](#)-E-13 WILLAUME KELLEY
Fred Ihejirika

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-5-15 [16]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Willaume Kelley ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 5, 2015 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 (\$79.00 due on December 31, 2014).

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

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

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

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

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

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