

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

May 18, 2016 at 10:00 A.M.

1. 12-24206-C-13 DARREN/DANNA LADD MOTION TO DISMISS CASE
 DPC-2 W. Steven Shumway 4-18-16 [148]

Final Ruling: No appearance at the May 18, 2016 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.

2. [14-20411](#)-C-13 GABRIEL ENCALADA
DPC-3 Christian Younger

MOTION TO DISMISS CASE
4-20-16 [[64](#)]

Final Ruling: No appearance at the May 18, 2016 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.

3. [16-21111](#)-C-13 SHAMEKA BATTE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-2-16 [[41](#)]

Also #4

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 the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on May 2, 2016.

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 April 26, 2016).

The court's decision is to sustain the Order to Show Cause.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 2, 2016. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on April 21, 2016. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a) (1) (B) (iv).
4. Debtor is \$50.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$25.00 is due prior to the hearing on this matter. Debtor has paid \$0.00 into the plan to date.
5. Debtor has failed to file a motion to confirm plan.

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

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

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

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

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

5. [14-31013](#)-C-13 KARI ROBERTS
DPC-3 Scott Sagaria

MOTION TO DISMISS CASE
4-18-16 [[70](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. The plan will complete in 230 months in violation of the statutory maximum of 60 months.
2. Debtors failed to provide for the Priority claim of the Franchise Tax Board (Claim #1) in the amount of \$1,823.20.

Debtor's Opposition

Debtors assert that they do not owe any debt to the FTB and will be filing an objection to claim. Debtors will file a second modified plan prior to the hearing.

Discussion

The docket reflects that Debtors have filed a modified plan-making the Trustee's motion to dismiss moot.

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

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

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

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

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

7. [11-34220](#)-C-13 LESLIE/JEAN KURTZ
DPC-1 Matthew Gilbert

MOTION TO DISMISS CASE
4-20-16 [[34](#)]

Final Ruling: No appearance at the May 18, 2016 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. [15-25721](#)-C-13 NICHOLAS HUGGINS
DPC-3 Matthew DeCaminada

MOTION TO DISMISS CASE
5-4-16 [[120](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. The plan will complete in 230 months in violation of the statutory maximum of 60 months.

Debtor's Opposition

Debtor responds and states that the Motion to Dismiss is based on a post-confirmation amended proof of claim, alleging to have increased the claim from \$338,071.00 to \$2,962,902.77 based on an amended verdict.

However, USAA, whom is paying the policy limits during the interim, is not opposing, an appeal being filed by John Addams, Esq., of Niddrie, Addams, Fuller, LLP. 600 West Broadway, Ste. 1200, San Diego, CA 92101.

As such, the claim will receive post-petition payments outside the bankruptcy, and possible credits to the amended verdict after appeal and therefore not a material breach of the plan warranting a dismissal.

Discussion

The court has considered the Trustee's concerns and finds it to be valid. The court does not have proof at this time that the plan will complete in 60 months.

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

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

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

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

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

10. [12-34323](#)-C-13 MICHAEL WILSON AND BROOKE MOTION TO DISMISS CASE
DPC-2 HENNESSY 5-4-16 [[73](#)]
Pro Se

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 4, 2016. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$1,289.42 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,289.42 is due prior to the hearing on this matter. Debtor has paid \$58,542.13 into the plan to date.

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

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$7,000 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,500 is due prior to this hearing. Debtor has paid a total of \$21,000 into the plan thus far.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$1,874 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$816 is due prior to this hearing. Debtor has paid a total of \$39,096 into the plan thus far.

Debtor's Opposition

Debtors will file a second modified plan prior to the hearing.

Discussion

The docket reflects that Debtors have filed a modified plan-making the Trustee's motion to dismiss moot.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 18, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$620 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$310 is due prior to the hearing. Debtor has paid \$4,650 into the plan to date.

Debtor's Responsive Declaration Dkt. 52

Debtor states dissatisfaction with attorney Richard Jare. Debtor has been trying to convert her case to one under Chapter 7 for nearly a year but has been stymied by her attorney. Debtor states that she would need to pay A-L Financial an additional \$1,000-\$3,000 to convert the case, but that she never received the exact amount. Mr. Jare informed Debtor that A-L Financial was not returning his calls. When Debtor called A-L Financial, she was informed that A-L Financial had not received any calls from Mr. Jare. Debtor contacted Mr. Jare about responding to this motion, but Mr. Jare did not respond. Debtor is currently seeking to hire another attorney.

Debtor's Attorney's Response Dkt. 524

Mr. Jare states that he sent Debtor some form oppositions to the Motion to Dismiss including a declaration promising to become current.

Prior

At the hearing held on April 20, 2016, the court continued the matter and ordered Debtor and Mr. Jare to appear telephonically.

In his response to Debtor's Motion to substitute herself in pro se, Debtor's counsel states his concern that a debt owed to A L Financial in the amount of \$3,000.00 will need to be paid.

In this case, A L Financial filed Proof of Claim No. 4 asserting a secured claim in the amount of \$10,636.00, with an annual interest rate of 23.5%. No collateral is listed on Proof of Claim No. 4 and no security agreement or filed UCC financing statement or other documentation of perfection filed.

Debtor's confirmed Chapter 13 Plan in this case provides for the A L Financial Claim, for which the collateral is identified as a 2006 Nissan Altima as follows: (1) Interest Rate 4.25%, (2) \$200.00 a month for forty-eight months, and (3) \$279.00 a month for the final eleven months.

Using the Microsoft Excel Loan Amortization Program, the court projects the payments on the \$10,636.00 claim amortized over sixty months to have monthly payments of \$200.00. That is the amount of the initial eleven months of payments.

The Trustee reports that \$3,147.66 has been paid on this secured claim. Exhibit A, Dckt. 60. This is stated to be \$2,511.24 to principal and \$635.90 to the interest.

Though the Debtor states that counsel told her that she would have to pay A L Financial an additional \$1,000 to \$3,000 "to do the conversion," Dckt. 52, such a payment is not required to convert the case. Rather, if the case is converted Debtor would have to either let the vehicle be repossessed, work out a reaffirmation agreement whereby the amount of the claim reduced to no more than the current retail value of the vehicle and the interest rate substantially reduced (11 U.S.C. § 524(c)(2) and (k)), or Debtor redeems the car for the cash value 11 U.S.C. §§ 722 and 506(a).

At the time of the September 2014 filing of this case, Debtor valued the 2006 Nissan Altima, with 98,000 miles on it, at \$10,000.00. Using the Kelly Blue Book on line guide, a 2.5 Sedan, has a retail value of \$5,200.00 to \$5,400.00. A 3.6 sedan is reported to have a retail value of \$6,000.00 to \$7,500.00. www.kbb.com. FN.1.

FN.1. This is a statement of retail, showroom ready used vehicles for sale by a dealer. Generally speaking, few debtors have their vehicles maintained in such condition, and the actual value as computed pursuant to 11 U.S.C. § 506(a) can be less.

Thus, it may be that the message attempted to be communicated to Debtor is that if the case is converted she does not have to make the plan payments, but will either have to go back paying the \$10,000.00 obligation at 23.4% interest (which the court would not approve as a reaffirmation), reach an agreement for around \$6,000.00 (depending on which model) and a

reasonable interest rate to pay over time, or come up with \$6,000.00 cash and "force" the creditor to take the cash.

Debtor reports that she is employed by the County of Sacramento. Amended Schedule I, Dckt. 34. Her gross income is \$3,787.00 a month. Required deductions total \$1,231.00, leaving her monthly take-home of \$2,455.00. On Amended Schedule J, Debtor lists \$2,055.86 in monthly expenses. *Id.* Of these, \$121.00 are temporary expenses.

Debtor's plan requires a \$310.00 a month payment, which is slightly less than her Net Monthly Income as stated on Amended Schedule J. The only creditor being paid is A L Financial, with the \$200.00 a month payments, which are increased in month forty-nine.

All other things being equal and the plan providing for paying only the A L Financial claim at 4.25% interest instead of the contract rate of 23.4%, one has to wonder why the Debtor would want to convert the case and be put back to negotiate an interest rate. The amount "paid" to A L Financial appears to be of little concern, as the Kelly Blue Book reported values are significantly less than what remains to be paid on the claim. FN.2.

FN.2. Though Proof of Claim No. 4 does not indicate when the credit underlying that claim was extended, on Schedule D Debtor lists this obligation as having been opened June 1, 2014, which was approximately 109 days prior to the commencement of the bankruptcy case.

The Debtor failed to appear that the April 20, 2016 hearing, though she filed an opposition. Due to the grave consequences in having this case dismissed or converted to one under Chapter 7, the court continues the hearing and orders the Debtor to appear in person at the continued hearing.

At the hearing, Debtor's counsel of record stated his concerns about the possible conversion or dismissal of the case, and commented about communication challenges which existed between the Debtor and Counsel.

Discussion

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

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted,

and the case is dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 3, 2016. 14 days' notice is required. That requirement was met.

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

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

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

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

Debtor's Opposition

Debtors state that they mailed the delinquent documents to the Trustee on May 6, 2016.

Discussion

The court has considered the Trustee's reasons for dismissal and finds them to be valid. The court does not have proof at this time that the Trustee has received the delinquent documents. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 16, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$7,680 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,900 is due prior to the hearing. Debtor has paid \$97,620 into the plan to date.

Debtors' Opposition

Debtors have already sent the trustee \$3,915.00 since the motion was filed. Debtors believe they can bring the plan current by the hearing on this motion, but they are waiting for tax refunds in the amount of \$4,915.00 which may not be available until after the hearing. If so, debtors will appear at the hearing to ask for a reasonable amount of time to receive the refunds and bring the plan payments current.

Prior

At the hearing held on April 20, 2016, the court continued the matter and set the following briefing schedule: On or before April 29, 2016, Debtor shall file and serve on the U.S. Trustee and Chapter 13 Trustee supplemental

pleadings in opposition to the Motion. Replies, if any, to the supplemental opposition pleadings, shall be filed and served on or before May 6, 2016.

This bankruptcy case was filed on November 22, 2013. The confirmed Chapter 13 Plan required monthly plan payments of \$3,900.00, of which \$3,369.00 are for the secured claim (current monthly mortgage and arrearage) for which the collateral is Debtor's residence, \$20,000.00 for priority taxes, and a 0.00% dividend for creditors holding general unsecured claims. Dckt. 11. The \$3,900.00 monthly plan payments is based on the computation of Debtor's \$8,025.82 monthly gross income, the necessary tax withholding, retirement and insurance deductions, and \$3,080.00 in necessary living expenses (which does not include housing). Schedules I and J, Dckt. 10.

In responding to this Motion, Debtor discloses that the tax withholding has been excessive, and for tax year 2015 there is a \$4,915.00 refund. This is not consistent with the information on Schedules I and J provided under penalty of perjury by Debtor.

At the hearing, Debtor's counsel stated that there are explanations for the tax refund, Debtor's default, and Debtor's ability to cure the default. The court continues the hearing to allow Debtor the opportunity to file admissible, credible evidence in support of such opposition.

Discussion

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 4, 2016. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$2,462 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,462 is due prior to the hearing on this matter. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor failed to provide for the post-petition priority claim of the Employment Development Department (Court claim #22) in the amount of \$7,475.61.

Debtor's Opposition

Debtors will provide for the claim of the EDD as Class 4 through business income or gift from a close relative of the Debtors.

Discussion

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

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$1,250 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$625 is due prior to this hearing. Debtor has paid a total of \$28,750 into the plan thus far.

Debtor's Opposition

Debtors will file a second modified plan prior to the hearing.

Discussion

The docket reflects that Debtors have filed a modified plan-making the Trustee's motion to dismiss moot.

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

20. [16-21539](#)-C-13 JAMES MINEAU AND LISA
DPC-1 SIEBERT
Eric Schwab

MOTION TO DISMISS CASE
5-4-16 [[18](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

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

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

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

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

21. [16-21640](#)-C-13 GREGORY MORENO
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-21-16 [[18](#)]

DEBTOR DISMISSED: 04/26/2016

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on April 21, 2016.

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 April 18, 2016).

The court's decision is to discharge the Order to Show Cause.

The court's docket reflects that the debtor was dismissed on April 26, 2016. Therefore, the OSC is discharged as moot.

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

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

The Order to Show Cause having been presented to the court, 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.

22. [15-27541](#)-C-13 MELONY OWENS
DPC-1 Mark Shmorgon

MOTION TO DISMISS CASE
4-18-16 [[17](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

23. [15-29641](#)-C-13 JOHN TORRES
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-19-16 [[60](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor Trustee, and other such other parties in interest as stated on the Certificate of Service on April 19, 2016.

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 April 19, 2016).

The court's decision is to discharge the Order to Show Cause.

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.

24. [13-26547](#)-C-13 SALVATORE/SHELLIE
DPC-1 PETRILLO
Candace Brooks

MOTION TO DISMISS CASE
4-18-16 [[45](#)]

Final Ruling: No appearance at the May 18, 2016 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 May 18, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$4,484 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,242 is due prior to this hearing. Debtor has paid a total of \$2,242 into the plan thus far.

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

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 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 April 18, 2016. 28 days' notice is required. That requirement was met.

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

The court's decision is to continue the case to June 14, 2016 at 2:00 p.m.

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

1. Debtors are \$20,000.00 delinquent in plan payments to the Trustee to date. Debtor has paid \$102,151.60 into the plan to date.

Debtor's Opposition

Debtor has filed a modified plan which proposes that the deadline for the sale of the motorcycle (scheduled to fund a lump sum payment of \$16,000) be extended three months to July, 2016. Debtor requests this matter be continued to be heard in conjunction with the motion to modify the plan set for hearing on June 14, 2016 at 2:00 p.m.

Trustee's Reply

The Trustee agrees with Debtor's request for a continuance.

Discussion

The court has considered the Trustee's reason for dismissal and finds it to be valid. The docket reflects that Debtors have not filed a modified plan.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to June 14, 2016 at 2:00 p.m.

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 April 26, 2016. Fourteen days' notice is required. That requirement was met.

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

1. Debtors are \$1240 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$850 is due on May 25, 2016. Debtor has paid \$6345 into the plan to date.
2. Debtors' Motion to Confirm was heard and denied at the hearing on March 1, 2016 and Debtors have not amended the plan and set a confirmation hearing date.

DEBTORS' OPPOSITION

Debtors respond, stating that they are currently working with counsel to prepare and file a third modified plan and motion to confirm said plan. Debtors also must address an anticipated objection to proof of claim of the Internal Revenue Service. Debtors plan to have the Objection and

confirmation of third amended plan filed set and served prior to date of hearing.

DISCUSSION

Although Debtors have asserted they will have an Objection to Claim of Internal Revenue Service and a chapter 13 plan with motion to confirm filed, set and served prior to the date of hearing on this motion, the docket reflects that Debtors have only filed an Objection to Claim, Dckt. 100. No chapter 13 plan or motion to confirm 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.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 5, 2016. 14 days' notice is required. That requirement was met.

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

The court's decision is

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

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$3,600.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,800.00 is due April 25, 2016. Debtor has paid \$0.00 into the plan to date.

APRIL 20, 2016 HEARING

At the April 20, 2016 hearing both Debtors appeared. On the record they confirmed that they did not want their attorney of record, Peter Macaluso, to do any more work. Debtor Diane Malcolm advised the court that she was an attorney, understood the issues, and had already spoken with another attorney, in the event that the Debtors did not elect to represent themselves. As Debtor Diane Malcolm spoke further, she realized that she does not under bankruptcy law, and thereupon said that she does not practice in federal court. Debtors decided that they need to engage counsel

The court continued the hearing one month to afford the Debtors the opportunity to engage counsel, have that counsel substitute in, and for Debtors and their new counsel prosecute this case in a manner the Debtors approve.

MAY 18, 2016 HEARING

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 hearing on the Motion to Dismiss is

Final Ruling: No appearance at the May 18, 2016 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 April 20, 2016. 28 days' notice is required. This requirement was met.

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

The court's decision is to continue the Motion to Dismiss to June 28, 2016 at 2:00 p.m.
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$64,660 to date with the last payment received on February 29, 2016. Trustee shows a total of \$67,365 is due, thus Debtor is delinquent \$2,705 in plan payments. Prior to the hearing on this matter, a payment of \$2,705 will come due. As a result, Debtor will need to pay \$5,410 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtors oppose Trustee's motion, stating that Debtors made a monthly payment of \$2,705 to Trustee, however they will not be making another payment of \$2,705 before the hearing date because they have recently filed a motion to confirm their modified chapter 13 plan, Dckt. 91. Under their current plan, Debtors are paying pre-petition arrearage to Wells Fargo. However Wells Fargo has preliminarily approved the Debtors' request a loan modification accounting for the arrearage, Dckt. 93. Before the date of hearing, Debtors will make another plan payment to Trustee under the terms outlined in the proposed plan to avoid overpayment to Wells Fargo.

DISCUSSION

The docket reflects that Debtors have filed a modified plan and a

motion to modify plan, set for hearing on June 28, 2016. Debtors state that they have made one payment of \$2,705 under the terms of the confirmed plan, and that they intend to make another plan payment under the terms of the modified plan prior to the date of hearing. However, while stating their intent to be current under the terms of the modified plan prior to the date of hearing, Debtors have not provided proof that they are actually current. The court will continue the instant motion to the date set for the motion to modify plan, Dckt. 91.

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 continued to June 28, 2016 at 2:00 p.m.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on April 6, 2016. 28 days' notice is required. This requirement was met.

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

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

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

1. Debtor has not provided Trustee with a tax transcript or a copy of the Federal Income Tax Report with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e)(2)(A). This is required 7 days before the date set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(I).
2. Debtor has failed to provide Trustee with his/her employer payment advices received 60 days prior to filing, under 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor filed an amended plan on February 22, 2016, Dckt. 20. The amended plan has not been served on all interested parties and no Motion to Confirm Plan is pending.

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

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that according to Trustee's calculations, the plan will complete in 74 months and not 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Class 2 claim filed by Sacramento County Tax Collector was \$8,761.68 greater than scheduled.

DEBTOR'S RESPONSE

Debtors have filed a response to Trustee's motion, Dckt. 29, stating non-opposition to Trustee's motion.

Noting Debtors' non-opposition to this motion, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

32. [13-31852](#)-C-13 FRED/EILEEN LIGHT
DPC-7 Marc Caraska

MOTION TO DISMISS CASE
4-18-16 [[86](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 4, 2016. Fourteen days' notice is required. That requirement was met.

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

1. Debtors are \$925 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$925 is due on May 25, 2016. Debtor has paid \$0 into the plan to date.
2. Debtor did not appear at the first meeting of creditors on April 28, 2016. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

The court notes Trustee's concerns and agrees that failure to comply with the terms of the plan and failure to appear at the first meeting of creditors is of great concern. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

34. [12-36555](#)-C-13 MANUEL DIZON AND
DPC-3 FRIDALEEN LOU
Mark Wolff

MOTION TO DISMISS CASE
4-20-16 [[69](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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 May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

36. [15-29961](#)-C-13 STEVEN RATH
DPC-2 Ronald Holland
DEBTOR DISMISSED: 05/05/2016

MOTION TO DISMISS CASE
4-27-16 [[53](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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 May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$2,250 to date with the last payment received on February 17, 2016. Trustee shows a total of \$3,120 is due, thus Debtor is delinquent \$870 in plan payments. Prior to the hearing on this matter, a payment of \$390 will come due. As a result, Debtor will need to pay \$1,260 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes Trustee's motion, stating that Debtor's hours at work had decreased causing him to fall behind on household expenses, one of which was keeping his vehicle registration current. As a result, his vehicle was impounded by the Suisun City Police department and will need to pay approximately \$1,200 to get that vehicle back. Moreover Debtor provides that Debtor is no longer employed at the same job as he previously was, and has obtained one. Debtor states he will file and serve a new modified plan with motion to modify prior to the date of hearing.

DISCUSSION

Although Debtor states that he will file set and serve a modified plan

prior to the date of hearing, the docket reflects that no such modified plan or motion to modify 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.

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c). Debtor failed to provide for the priority claim of the Internal Revenue Service, Claim No. 1, in the amount of \$78,505.61. Section 2.13 makes this a breach of the plan. Debtor's plan confirm April 30, 2015 provides for a secured claim of the IRS for 2008-2011 taxes in the amount of \$78,505.61 as Class 4 to be paid by Debtor's ex-husband. The claim filed by the IRS reports the last 4 digits of the taxpayer ID number as 7449. This is not the last 4 digits of the Debtor.

DEBTOR'S OPPOSITION

Debtor responds, stating that Debtor is not in material default as the claim for the IRS, Claim No. 1, is to be paid directly by Debtor's ex-husband. Debtor is current under the terms of the confirmed plan.

DISCUSSION

A look at the Proof of Claim filed by the Internal Revenue Service reveals that indeed, the taxpayer ID number identifying the taxpayer responsible for the claim amount is not Debtor's social security number. The court assumes that the taxpayer ID number in the IRS's proof of claim is that of Debtor's ex-husband for taxes incurred during a period when Debtor

and her ex-husband were married. The IRS has filed Proof of Claim No. 1, providing that Debtor is responsible for the priority tax in the amount of \$78,505.61. The docket reflects that Debtor has not filed an Objection to Claim of the Internal Revenue Service, and Debtor does not attempt to dispute that Debtor may be jointly responsible for this priority tax debt. Debtor merely states in her plan and opposition that the amount is to be paid directly by Debtor's ex-husband, with nothing further to substantiate this proposition. Debtor does not provide the declaration of her ex-husband to substantiate that he will be paying for this debt, and thus the court is not convinced that Debtor is not in material default with respect to a term of the confirmed plan.

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

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has \$0 to date. Trustee shows a total of \$5,834 is due. Prior to the hearing on this matter, a payment of \$2,917 will come due. As a result, Debtor will need to pay \$8,751 in order to bring the plan current as of the date of this hearing.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 15, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default pursuant to section 5.03 of the plan. According to Trustee's calculations, the plan will complete in 438 months and not the 60 months proposed. Debtors failed to increase the plan payments per section 2.08(b)(4)(I) of the plan. The monthly contract installment amount has increased from \$715 at filing to \$908.39. The current plan payment net of Trustee fees is \$932.71. The current monthly contract installment amount is \$908.39 which leaves \$24.32 per month for all other creditors. Remaining amounts to be paid total \$9,711.34, which divided by \$24.32, amounts to 400 months remaining. The Debtor has at this time completed 38 months of the plan.

DEBTOR'S OPPOSITION

Debtor opposes Trustee's motion to dismiss, stating that she will file set and serve a modified plan to cure the delinquency prior to the date of hearing.

DISCUSSION

Although Debtor states that she will file a modified plan prior to the date of hearing in order to address the deficiency identified by Trustee, the docket reflects that no such action has been forthcoming. No modified

plan having been filed and no motion to modify having been set and served, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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.

44. [12-29884](#)-C-13 CAROL SMITH
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
4-18-16 [[105](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 18, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$3,595 to date with the last payment received on February 22, 2016. Trustee shows a total of \$4,400 is due, thus Debtor is delinquent \$805 in plan payments. Prior to the hearing on this matter, a payment of \$400 will come due. As a result, Debtor will need to pay \$1,205 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor opposes Trustee's motion, stating she will bring the account current by the date of hearing. Debtor in her declaration states that she was laid off from her job but she is back to work and able to bring the account current.

DISCUSSION

Although Debtor has stated her intent to be current by the date of hearing, she has not provided evidence to the court that she is actually current. To date, no evidence has been presented that the Debtor has cured the delinquency.

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

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

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

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

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

46. [15-26986](#)-C-13 LISA SWINNEY
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
4-18-16 [[29](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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.

47. [11-47587](#)-C-13 PRIMITIVO/GLORIA
DPC-3 VILLARREAL
Steele Lanphier

MOTION TO DISMISS CASE
4-15-16 [[66](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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 May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 18, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$11,430 to date with the last payment received on November 9, 2015. Trustee shows a total of \$13,760 is due, thus Debtor is delinquent \$2,330 in plan payments. Prior to the hearing on this matter, a payment of \$860 will come due. As a result, Debtor will need to pay \$3,190 in order to bring the plan current as of the date of this hearing.

APRIL 20, 2016 HEARING

The Debtor appeared at the hearing and requested that it be continued so that she and her attorney could respond to the Motion. Debtor represented that there has been difficulty in communicating with her attorney.

The court ordered that the hearing on the Motion to Dismiss was continued to 10:00 a.m. on May 18, 2016. Opposition, if any, to the Motion was to be filed and served on or before May 6, 2016; and replies, if any, were to be filed and served on or before May 13, 2016. The court further ordered Rebecca Erway, the Debtor, and David Henshaw, counsel for Debtor, shall appear in person at the May 18, 2016 hearing, no telephonic appearances permitted, Dckt. 55.

DISCUSSION

The docket reflects that although opposition was to be filed by May 6, 2016, no opposition has been filed by Debtor or Debtor's counsel, and in fact there has been no movement on the docket since the last hearing date of April 20, 2016. The Trustee's basis for dismissal remains outstanding.

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

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

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

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

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

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 March 16, 2016. 28 days' notice is required. This requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Debtor is in material default with respect to the term of a confirmed plan, 11 U.S.C. § 1307(c)(6). Debtor has paid a total of \$9,932 to date with the last payment received on March 9, 2016. Trustee shows a total of \$10,854.30 is due, thus Debtor is delinquent \$922.30 in plan payments. Prior to the hearing on this matter, a payment of \$723.62 will come due. As a result, Debtor will need to pay \$1,645.92 in order to bring the plan current as of the date of this hearing.

DEBTOR'S OPPOSITION

Debtor responds to Trustee's motion, stating that Debtor has paid a delinquent amount of \$922.30 and will have paid the next installment of \$723.62 prior to the date of hearing.

APRIL 20, 2016 HEARING

The Chapter 13 Trustee stated that no payment has been made. At the hearing Debtor handed \$900.00 in payments (cashier's checks), but that this would still leave a \$700.00 delinquency.

The Trustee, in light of the substantial payment by Debtor, concurred in continuing this hearing.

DISCUSSION

The docket reflects that Trustee has not withdrawn the instant motion to dismiss, suggesting to the court that the Debtor remains delinquent in plan payments. To date, no evidence has been presented that the Debtor has cured the delinquency. Cause exists to dismiss the case.

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

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

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

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

51. [14-29899](#)-C-13 DEBRA RIESE
DPC-3 Gary Fraley

MOTION TO DISMISS CASE
4-15-16 [[24](#)]

Final Ruling: No appearance at the May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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 May 18, 2016 hearing is required.

The Chapter 13 Trustee having filed 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, the ex parte motion being consistent with the opposition filed to the Motion, 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.
