

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 10, 2026 at 10:00 a.m.

1. <u>16-22600-E-13</u>	MICHAEL HANKS	MOTION TO DISMISS CASE
DPC-2	Mary Ellen Terranella	7-13-16 [26]

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is grant and the case is dismissed.
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016.
Dckt. 26

The Trustee argues that the Debtor did not commence making plan payments and is \$4,332.00 delinquent in plan payments, which represents multiple months of the \$2,166.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

hearing.

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

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

2. 12-25302-E-13 **MONIQUE KIZER** **MOTION TO DISMISS CASE**
 DPC-2 **Peter Macaluso** **7-13-16 [54]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 54. The Trustee seeks dismissal due to the Debtor's delinquency.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on July 21, 2016. Dckt. 58. The Debtor states that "Debtor will be current on or before the hearing on this matter." Dckt. 58.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,291.00 delinquent in plan payments, which represents multiple months of the \$2,150.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

3. [16-22902-E-13](#) JOHN/CARLA NEWMAN
Thomas Amberg

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-8-16 [14]**

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on John and Carla Newman ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 8, 2016. The court computes that 63 days' notice has been provided.

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

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

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

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

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Angela Morgan (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 15, 2016. The court computes that 56 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$46.00 due on June 1, 2016).

The court’s decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court’s docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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.
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,320.00 delinquent in plan payments, which represents multiple months of the \$220.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed a non-opposition on July 27, 2016. Dckt. 76.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 22, 2016. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 22, 2016. Dckt. 104.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

7.	<u>13-24610</u> -E-13 DPC-5	DAX/TINA CHAVEZ Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 5-25-16 [76]
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Final Ruling: No appearance at the August 10, 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.

8. [16-21310-E-13](#) CATHERINE CRUZ AND JACK MOTION TO DISMISS CASE
DPC-1 LAM 7-13-16 [\[24\]](#)
Bert Vega

Final Ruling: No appearance at the August 10, 2106 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 24.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,164.00 delinquent in plan payments, which represents multiple months of the \$2,583.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to file a responsive pleading.

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

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

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

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

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

9. [16-23611](#)-E-13 **BRENDA SMITHEY**
 Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-6-16 [14]**

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 Brenda Smithey ("Debtor"), Trustee, and other parties in interest on July 6, 2016. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on July 1, 2016).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

10. [16-23712-E-13](#) MIKE HAMMER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-13-16 [\[25\]](#)

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 Mike Hammer ("Debtor"), Trustee, and other parties in interest on July 13, 2016. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on July 8, 2016).

The court's decision is to continued the hearing on the Motion to Dismiss to 10:00 a.m. on September 8, 2016, to be heard in conjunction with the Court's Order to Show Cause why a Prefiling Review Order should not be entered for this Debtor.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

11. [13-24415](#)-E-13 ANTONIO/MARIA HERNANDEZ MOTION TO DISMISS CASE
DPC-1 C Anthony Hughes 7-13-16 [[181](#)]

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: 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 Tatyana Molitvenik ("Debtor"), Trustee, and other parties in interest on July 6, 2016. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on July 1, 2016).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 27, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 27, 2016. Dckt. 40.

The Trustee argues that the Debtor did not commence making plan payments and is \$75.00 delinquent in plan payments, which represents multiple months of the \$75.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee also asserts that the petition is not filed in good faith and is an attempt to delay litigation. The Debtor and her spouse have filed a series of cases:

Case No.	Debtor
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10-43445	ALEXANDER MOLITVENIK
12-39938	TATYANA MOLITVENIK
13-32961	ALEXANDER MOLITVENIK
15-26950	ALEKSANDR MOLITVENIK
16-20274	ALEXANDER MOLITVENIK
16-23671	ALEKSANDR MOLITVENIK

The first case was a Chapter 7 and dismissed due to failure to file necessary documents. The next three were Chapter 13 cases that were dismissed because the Debtor failed to provide timely tax returns, pay advises, appear at 341 Meeting, or notice and set a plan for confirmation. The next case was dismissed because of the same reasons but the Debtor tried to appear at one meeting, but without the Debtor's attorney.

This appears to not be a good faith filing and is cause to dismiss the case.

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

The Trustee also asserts that the Plan and documents filed show unreasonable delay because they are not fully complete nor does the plan propose to pay any creditors. The Statement of Financial Affairs is incomplete and the Schedules do not appear to list all creditors. Failure to complete all documents is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

The Debtor has failed to timely provide the Trustee with business documents including: profit and loss statements, bank account statements; proof of license and insurance or written statement of no such documentation exists]. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These documents are required 7 days before the date set for the first meeting, 11 U.S.C. § 521(e)(2)(A)(I). Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the plan is feasible, viable, or complies with 11 U.S.C. § 1325.

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

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

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

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

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

14. [16-23671](#)-E-13 **ALEKSANDR MOLITVENIK** **MOTION TO DISMISS CASE**
DPC-2 Pro Se 7-27-16 [[27](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 27, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on September 8, 2016, to be heard in conjunction with the Court's Order to Show Cause why a Prefiling Review Order should not be entered for this Debtor.</p>

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 27, 2016. Dckt. 27.

The Trustee argues that the Debtor did not commence making plan payments and is \$75.00 delinquent in plan payments, which represents multiple months of the \$75.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

The Trustee additionally argues that the Debtor is a serial filer, having filed six different cases since 2011 without any ascertainable change in circumstances.

1. 10-43445 - Alexander Molitvenik - 7 - Dismissed 9/21/10 - failure to file documents timely - NO COURT FEES PAID
2. 12-39938 - Tatyana Molitvenik - 13 - Dismissed 1/9/13 - Trustees Motion
3. 13-32961 - Alexander Molitvenik - 13 - Dismissed 12/16/13 - On Trustees Motion - \$75.00 of Court Fees Paid
4. 15-26950 - Aleksandr Molitvenik - 13 - Dismissed 12/2/15 - On Trustees Motion
5. 16-20274 - Alexander Molitvenik - 13 - Dismissed 4/26/16 - On Trustees Motion
6. 16-23615 - Tatyana Molitvenik - 13 - PENDING - Trustees Motion see item no. 12; NO COURT FEES PAID

These repeat filings are only further exasperated by the Debtor failing to complete the Chapter 13 documents and failing to accurately list creditors in the proposed plan. This is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion.

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

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

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

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

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

15. [16-23671](#)-E-13 ALEKSANDR MOLITVENIK
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-16 [21]**

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 Aleksandr Molitvenik ("Debtor"), Trustee, and other parties in interest on July 11, 2016. The court computes that 30 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 6, 2016).

The hearing on the Order to Show Cause is continued to 10:00 a.m. on September 8, 2016, to be heard in conjunction with the Court's Order to Show Cause why a Prefiling Review Order should not be entered for this Debtor. and order the case dismissed.

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

16. [12-35317](#)-E-13 **JOHN VIRGEN AND ELIZABETH MOTION TO DISMISS CASE**
DPC-2 LOWERY-VIRGEN 7-12-16 [97]
Matthew DeCaminada

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2106. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 97. The Trustee seeks dismissal due to the Debtor's delinquency.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on July 26, 2016. Dckt. 101. The Debtor state they are currently working with their attorney to convert the case to on under Chapter 7.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,277.00 delinquent in plan payments, which represents multiple months of the \$992.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured nor

has the case been converted to a Chapter 7 as to date.

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

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

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

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

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

17. [16-23617](#)-E-13 **JOHN MONROE**
Kristy Hernandez

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-7-16 [[17](#)]

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on John Monroe (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 7, 2016. The court computes that 34 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$2.00 due on July 5, 2016).

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

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 35.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,582.84 delinquent in plan payments, which represents multiple months of the \$2,326.64 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

19. [15-25819-E-13](#) **ERICKA HOLLOWAY** **MOTION TO DISMISS CASE**
DPC-2 **Muoi Chea** **7-13-16 [56]**

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,553.00 delinquent in plan payments, which represents multiple months of the \$1,910.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

20. [16-21919-E-13](#) **THERON CONNELLY** **MOTION TO DISMISS CASE**
DPC-3 **Rupert Corkill** **7-13-16 [36]**

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 36.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 14, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

21. [16-23219-E-13](#) **BRANDON/LARISA NICHOLS** **MOTION TO DISMISS CASE**
DPC-2 **Eric Vandermey** **6-29-16 [14]**

Final Ruling: No appearance at the August 10, 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on June 29, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 29, 2016. Dckt. 14.

The Trustee argues that the Debtor did not commence making plan payments and is \$4,765.00 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held

pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Moreover, Debtor admitted at the Meeting of Creditors that the federal income tax return for the past four tax year still have not been filed. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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, and the case shall proceed in this court.

Final Ruling: No appearance at the August 10, 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 35.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,798.00 delinquent in plan payments, which represents multiple months of the \$2,899.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

dismissed.

24. [16-22827](#)-E-7 **JALYN SCHNEIDER** **MOTION TO DISMISS CASE**
 DPC-2 **Mikalah Liviakis** **7-5-16 [25]**

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The case having been converted to one under Chapter 7, the Motion is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion is dismissed without prejudice as moot, the case having been converted to one under a chapter 7.

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 37.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,487.00 delinquent in plan payments, which represents multiple months of the \$1,829.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$11,697.00 delinquent in plan payments, which represents multiple months of the \$3,899.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

27. [16-22729-E-13](#) **KRYSTAL WILLINGHAM**
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-5-16 [21]

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Krystal Willingham (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 5, 2016. The court computes that 36 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$77.00 due on June 27, 2016).

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

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

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

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

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

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 27, 2016. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,258.00 delinquent in plan payments, which represents multiple months of the \$628.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion to date.

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

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

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

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

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

29. [16-24134](#)-E-13 LETICIA BARRERA
Thomas Gillis

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-16 [16]**

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Leticia Barrera (“Debtor”), Trustee, and other parties in interest on July 11, 2016. The court computes that 30 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$310.00 due on June 27, 2016).

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

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 29.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,364.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

31. **15-26938-E-13** **GALEN BACH** **MOTION TO DISMISS CASE**
 DPC-1 **Eric John Schwab** **7-13-16 [20]**

Final Ruling: No appearance at the August 10, 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, and the case shall proceed in this court.

Final Ruling: No appearance at the August 10, 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 (pro se) and Office of the United States Trustee on July 5, 2016. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 5, 2016. Dckt. 27.

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

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

The Trustee asserts that the Debtor's pre-petition credit counseling course has not been filed. The Bankruptcy Code requires that the credit counseling course be taken within the 180-day period ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Debtor has not show that an exception from the requirement applies or otherwise explained the failure to comply with the requirement.

The Debtor has failed to respond to the instant Motion.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2016. Dckt. 35. The Trustee seeks dismissal due to the Debtor's delinquency.

Joe L. And Melissa L. Porto ("Debtor") filed an opposition on July 22, 2016. Dckt. 39. The Debtor states that they will be file, set, serve, and be current under a modified plan on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,364.00 delinquent in plan payments, which represents multiple months of the \$2,155.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

hearing.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 27, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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<p>The court's decision is to grant the Motion to Dismiss and dismiss the case.</p>
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 27, 2016. Dckt. 47.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016. A review of the docket shows that Debtor has filed a new plan but failed to file a motion to confirm a plan.

The Trustee argues that the Debtor did not commence making plan payments and is \$3,600.00 delinquent in plan payments, which represents multiple months of the \$1,800.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Moreover, Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2014 tax year still has not been filed. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Amended Plan Filed

On July 27, 2016, Debtor filed an amended plan. Dckt. 51. No motion to confirm or supporting pleadings were filed and served. The Amended Plan terms are summarized as follows:

- a. Debtor is to make a \$100.00 plan payment for June 2016 and then \$2,000.00 a month payment for the next 35 months.
- b. Debtor is to also pay 75% of the net proceeds from litigation and 75% of tax refunds from pre-petition years (which shall not be less than \$800.00 a month commencing in month 15) into the plan.
- c. For the Class 1 claim, monthly post-petition current installment payments do not commence until month 2 of the plan and will be \$1,572.77. In addition, in month 15 Debtor will commence making \$685.00 a month plan disbursements for the arrearage due on this claim. The arrearage is stated in the Plan by Debtor to be \$19,187.32. With a monthly arrearage payment of \$685.00, it would take 28 months to cure the arrearage, which (by beginning in month 15) exceeds the 36 month term of this plan.
- d. For the Class 2 claim, the \$4,406.48 stated secured claim is to be paid by "\$83 initially" and then increase it to \$230 a month for months 25 through 36 of the Plan, with 4.5% interest.
- e. Unsecured claims (stated in the Plan to be \$66,475.00) are to receive no less than a 7% dividend.
- f. In the additional provision, conflicting dollar amounts and treatment are stated for the Class 1 claim:

"§6.03 General Conditions: The trustee shall pay post petition arrears on the Class 1 obligation held by US Bank as trustee to LSF8 REIT Caliber Home Loans, (Cit Fin Serv.) through disbursements beginning with month 15, at \$56.20 per month, as if it were a class 1 arrears as 0% interest for the sum of \$1572.77. Since this plan pays post petition arrears, the ongoing class 1 conduit distributions beginning with the end of July 2009 shall resume with the trustee making paying only 1 (one) mortgage installment per month as of that date in the monthly sum of \$1572.77 (which may change with the terms of the note and deed to trust to take into account escrow and rate changes).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues

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

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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2016. Dckt. 108. The Trustee seeks dismissal due to the Debtor's delinquency.

LeQueta Lee Martin ("Debtor") filed an opposition on July 27, 2016. Dckt. 112. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$456.00 delinquent in plan payments, which represents multiple months of the \$152.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

hearing.

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

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

36.	<u>16-20743</u> -E-13 DPC-2	ANNA PETERSON Ronald Holland	MOTION TO DISMISS CASE 7-13-16 [<u>73</u>]
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Final Ruling: No appearance at the August 10, 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 13, 2016. Dckt. 28. The Trustee seeks dismissal due to the Debtor's delinquency.

Benjamin A. and Brandee R. Ahlson ("Debtor") filed an opposition on July 27, 2016. Dckt. 32. The Debtor states that they will file an amended plan or convert the case to a Chapter 7 on or before the hearing on the Trustee's Motion.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,574.00 delinquent in plan payments, which represents multiple months of the \$646.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

38. 15-20045-E-13 **MICHAEL NORMAN** **MOTION TO DISMISS CASE**
 DPC-1 **Vanessa Sundin** **7-12-16 [25]**

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 25.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$390.00 delinquent in plan payments, which represents multiple months of the \$195.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Debtor presented no opposition to the motion.

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

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

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

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

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

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

39. [12-38247](#)-E-13 **MARTY/KATHERINE GONSMAN MOTION TO DISMISS CASE**
DPC-1 **Lauren Rode 7-13-16 [[181](#)]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 10, 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.**

40. [13-32849](#)-E-13 WESLEY/BONNIE YARBROUGH MOTION TO DISMISS CASE
DPC-2 Scott Coben 7-12-16 [[26](#)]

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.

41. [16-21451](#)-E-7 TRACY SABATHIA
DPC-2 C. Anthony Hughes

MOTION TO DISMISS CASE
7-13-16 [[23](#)]

**CASE CONVERTED TO CHAPTER 7:
07/13/2016**

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The case having been converted to one under Chapter 7, the Motion is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion is dismissed as moot, the case having been converted to one under a chapter 7.

42. [15-23853](#)-E-13 PETER/TAMARALEE HARBMAN MOTION TO DISMISS CASE
DPC-3 Cara O'Neill 7-13-16 [[49](#)]

Final Ruling: No appearance at the August 10, 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.**

43. [15-27854](#)-E-13 DELANOYE ROBERTSON CONTINUED MOTION TO DISMISS
DPC-2 Richard Jare CASE
5-13-16 [[84](#)]

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 May 13, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 13, 2016. Dckt. 84. The Trustee seeks dismissal based on the Debtor's delinquency in plan payments and failure to file a Motion to Confirm a Plan.

DEBTOR'S OPPOSITION

Debtor filed an opposition on June 9, 2016. Dckt. 89 The Debtor states that she is in settlement negotiations with Claim Holder #2.

The Debtor's counsel attempts to admitted unauthenticated evidence into the record alleging that the delinquency has been cured.

Additionally, the Debtor's counsel argues that proposing a new plan "this week will hamper the progress already made in settlement negotiations. The Debtor needs more time to propose a new plan." Dckt. 89.

EX PARTE REQUEST FOR CONTINUANCE

On June 7, 2016, the Debtor filed an *ex parte* request for a continuance of the instant Motion, signed with counsel for Claim Holder #2, based on the ongoing settlement negotiations. The reason for this is for "negotiations would be easier to consummate if the parties could be less concerned with plan confirmation for the next two weeks.

DEBTOR'S STATUS REPORT

The Debtor filed a status report on June 14, 2016. Dckt. 92. The Debtor states that the Trustee has indicated that he will not stipulate to a continuance.

The Debtor states that the settlement is very close in the Utah State court case in judicial foreclosure. The Debtor states that the negotiating parties would like to have another 48 hours to settle.

JUNE 22, 2016 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on August 10, 2016.

DISCUSSION

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$251.97 delinquent in plan payments, which represents multiple months of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 1, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no

explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor's last plan was denied on March 1, 2016 – over three months ago. The Debtor is now attempting to justify a continuance of the instant Motion due to an unspecified settlement negotiation with an unspecified effect on any unspecified amended plans.

Debtor has not provided the court with any further documents, evidence, or information indicating that this case is being prosecuted in good faith or that Debtor can perform a Chapter 13 Plan. This court afforded Debtor well in excess of the time that Debtor assured the court was necessary to resolve the disputes in this case (see Status Report, Dckt. 92), and Debtor has not provided any further information.

As evidenced by the Trustee's lack of consent on the continuance, there appears to be no good cause for why the Debtor is both delinquent and has failed to propose a new plan. The Debtor's counsel failed to properly authenticate any evidence proving that the delinquency has been cured, Debtor's counsel failing to have provided a declaration to authenticate the checks.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 1, 2016. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

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

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

The Trustee further objects, stating that the petition may not be filed in good faith. The Debtor has failed to list the 6 prior bankruptcies between 2010 and 2015 filed by the Debtor. The Debtor does not disclose this information. The failure to provide accurate and complete information is grounds to dismiss the case.

Though the Trustee points out the heretofore undisclosed prior bankruptcy filings by Debtor, there are additional related bankruptcy filings in which Debtor has participated and litigated. Those cases were filed by her brother, Jeffrey Akzam, and are:

A. 11-25844 in *Pro Se*

1. Chapter 13 Filed March 9, 2011
2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.
3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.
4. Discharge entered September 2, 2011.

B. 13-20155 in *Pro se*

1. Chapter 13 Filed January 7, 2013.
2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*
3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.
 - a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured claim

and alleged violations of the automatic stay.

- b. The court determined that abstention pursuant to 28 U.S.C. § 1334(c), the court finding that there were no issues arising under the Bankruptcy Code or in the bankruptcy case. Civil Minutes, Dckt. 85.

C. 14-30332 in *Pro Se*

1. Chapter 13 Case filed October 17, 2014
2. Case dismissed on July 8, 2015.
3. The case was dismissed due to debtor Jeffrey Akzam's failure to file an amended plan after the court denied confirmation of the proposed plan. Civil Minutes, Dckt. 83.

The six prior bankruptcy cases filed by Debtor are summarized as follows:

14-28272 <i>In Pro Se</i>	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	<p>I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan.</p> <p>II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28.</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
14-23825 <i>In Pro Se</i>	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014
	<p>I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49.</p>	
12-37369 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012

	<p>I. The case was dismissed due to Debtor failing to file Schedules, Statement of Financial Affairs, and Plan. Dckt. 21.</p> <p>II. Motion to Vacate Dismissal Order denied. Order, Dckt. 33</p> <p>III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
11-43187 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2011 Dismissed December 14, 2011
	<p>I. The case was dismissed for failure of Debtor to file Schedules, Statement of Financial Affairs, and Plan. Order, Dckt. 25.</p> <p>II. Case also dismissed due to Debtor failing to pay filing fees. Order, Dckt. 26.</p>	
11-20282 <i>In Pro Se</i>	Chapter 13 Case	Filed January 4, 2011 Dismissed March 18, 2011
	<p>I. Case dismissed due to Debtor's failure to attend First Meeting of Creditors and failure to file motion to confirm Chapter 13 Plan. Motion and Order, Dckts. 22, 27.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	
10-45216 <i>In Pro Se</i>	Chapter 13 Case	Filed September 22, 2010 Dismissed December 16, 2010
	<p>I. The bankruptcy case was dismissed due to Debtor failing to file a motion to confirm the Chapter 13 Plan and Debtor being delinquent in Plan payments. Motion and Order, Dckts. 22, 38.</p> <p>II. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees.</p>	

Jeffrey Akzam and his sister, the Debtor Diane Akzam, have filed a series of coordinated Chapter 13 cases without either of them engaging in the good faith prosecution of those cases. To the extent that either of them believe they have a bona fide dispute with the lender who asserted a lien against property in which these two debtor believed they had an interest, those issues are outside of bankruptcy.

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive

bankruptcy cases. 15-2247.

Clearly, the Debtor lack of good faith prosecution of this case warrants action under 11 U.S.C. § 1307. That could be dismissal of the case or conversion to Chapter 7 to allow an independent fiduciary Chapter 7 Trustee to take possession of all property of the bankruptcy estate, liquidate all non-exempt property, and make a disbursement to creditors.

Even if the court were to dismiss this case, an issue arises whether the dismissal should be with prejudice, Debtor having repeated filed bankruptcy cases which she has failed to prosecute in good faith.

FEBRUARY 17, 2016 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on May 18, 2016. Dckt. 30.

MAY 20, 2016 HEARING

Since the continued hearing, the Debtor appeared at the Meeting of Creditors held on February 25, 2016. Additionally, the Debtor filed an Amended Petition and Schedules. Dckts. 33 and 34.

On April 8, 2016, the Debtor filed a Motion to Confirm Plan but failed to attach a proposed plan. Dckt. 38.

There is pending an Adversary Proceeding in which the U.S. Trustee seeks to obtain a Prefiling Review Order in light of the Debtor's non-productive repeat filing of bankruptcy cases.

While the Trustee's objection to confirmation raises significant issues, the court will not dismiss this case at this time.

The court continued the hearing to 10:00 a.m. on August 10, 2016.

AUGUST 10, 2016 HEARING

The Debtor has filed and set for hearing a Motion to Confirm Amended Plan. Dckt. 82 and 85.

The Debtor has filed amended Schedules E/F. Dckt. 86. A review of Debtor's Schedules is as follows:

A. Schedule A (Dckt. 22)

1. 802 Ohio Street

a. FMV.....\$240,000

b. Value of Debtor's Interest.....\$120,000

(1) Nature of Debtor's Interest..... "Homestead"

B. Schedule B (*Id.*)

August 10, 2016 at 10:00 a.m.

1. Vehicles.....None
2. Household Goods.....\$190
3. Electronics.....\$225
4. Clothing.....\$100
5. Jewelry.....\$ 35
6. Tax Refunds.....None
7. Claims Against Third Parties
 - a. Assault Claim.....No Value Give
 - b. Rescission Claim.....On Appeal

C. Schedule D (*Id.*)

1. Secured Claims.....None

D. Amended Schedule E (Dckt. 86)

1. Priority Claim.....None

E. Amended Schedule F (*Id.*)

1. General Unsecured.....\$37,240.00
 - a. \$31,800.00 listed as FTB Claim (consistent with POC 1)
 - b. Two other proofs of claims filed.

F. Schedule I (Dckt. 22)

1. Not Employed
2. Income, "Loan".....\$100
3. Income, "Gift From Brother".....\$350
4. On Amended Schedule J Debtor states she will apply for Social Security

G. Amended Schedule J (Dckt. 34)

1. Total Expenses.....\$355
 - a. Rent/Mortgage.....\$ 0.00
 - b. Property Taxes.....\$ 0.00
 - c. Homeowner's Ins.....\$ 0.00
 - d. Home Maintenance.....\$ 0.00
 - e. Electricity/Gas.....\$120.00
 - f. Water/Sewer/Garbage.....\$100.00
 - g. Food/Housekeeping Supplies.....\$ 29.00

h.	Clothing.....	\$ 5.00
i.	Personal Care Products.....	\$ 5.00
j.	Medical/Dental Expenses.....	\$ 5.00
k.	Transportation.....	\$ 16.00
l.	Entertainment.....	\$ 0.00
m.	Insurance.....	\$ 0.00

H. Statement of Financial Affairs (*Id.*)

1. Part 2, Income

a. Employment or Business

(1)	2016 YTD.....	None
(2)	2015.....	None
(3)	2014.....	None

b. Other Income

(1)	2016 YTD.....	\$4,200 (Gift from Brother) \$1,200 (Loan)
(2)	2015.....	\$4,200 (Gift from Brother) \$1,200 (Loan)
(3)	2014.....	\$4,200 (Gift from Brother) \$1,500 (Loan)

2. Part 4, Legal Actions

a. Akzam v. Sand Canyon.....On Appeal

The court has reviewed the Amended Plan, the terms of which are summarized as follows:

- A. Debtor will make \$95.00 a month Plan payments for sixty months.
- B. The Chapter 13 Trustee will be paid his fee from the monthly Plan payments, which amount the court projects to be \$6.65 (est. at 7%).
- C. Class 1 Payments Authorized.....None
- D. Class 2 Payments Authorized.....None
- E. Class 3 Surrenders Authorized.....None
- F. Class 4 Payments to be Made by Debtor.....None

- G. Class 5 Payments Authorized.....None
- H. Class 6 Payments Authorized.....None
- I. Class 7 Payments Authorized.....13% Dividend on \$37,240 in claims.

Amended Plan, Dckt. 85.

The court has spent a substantial amount of time at status conferences and hearing in this case and the U.S. Trustee's Adversary Proceeding in which she is requesting a prefilng review order due to Debtor's multiple non-productive filing of prior bankruptcy cases (in addition to bankruptcy cases filed by her brother which have been dismissed). In these discussions, it has been made clear to the court that Debtor is involved in a dispute in which she contests the right of a third-party to foreclose on real property. The filing of the bankruptcy cases by Debtor (and her brother) were to gain the benefit of the automatic stay, without any productive prosecution of the bankruptcy cases.

Debtor believes that it is not "right" that this third-party could assert that it could foreclose, the debt was not enforceable, and that the bankruptcy laws should prevent such third-party from proceeding to attempt to assert its rights and interests over Debtor's objection and litigation in the state court. The court has reviewed with the Debtor, Chapter 13 Trustee, and U.S. Trustee the basic principle that the Bankruptcy Code does not impose the automatic stay as a "free injunction" for non-bankruptcy case related litigation absent there being a good faith, productive prosecution of a bankruptcy case or reorganization. See *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

As this court discussed in *In re De la Salle*, a debtor or trustee can use the automatic stay in lieu of obtaining a preliminary injunction (Fed. R. Civ. P. 65), and posting the necessary bond, by providing an adequate protection fund. The fund, held by the Trustee or in a blocked account, is created with monthly plan payments (often in the amount of what the monthly mortgage payment would be) being paid into the fund. When the litigation is resolved, this court can then use the fund to pay for Rule 65(c) damages if it is determined that the automatic stay improperly enjoined the third-party from exercising its rights or obtaining possession of property that it was determined to own or be entitled to obtain. If the debtor or trustee wins, the fund can then be released to be disbursed through the plan.

In looking at the financial information provided by Debtor under penalty of perjury, she has no ability to fund a plan. She has no income, but receives only gifts from her brother (who has filed several bankruptcy cases) and loans. While Debtor believes that she will receive Social Security Benefits in December 2016, there is no indication that such monies will be sufficient to provide for Debtor's actual living expenses and fund a plan.

The court review of Schedule J indicates that the amounts stated therein are not credible. While purporting to own a home, Debtor has no expenses for property taxes, property insurance, or property maintenance. Debtor will spend next to nothing on clothing and allocates very little for food. It appears that the expenses on Schedule J are made up numbers to mislead the court into believing that a plan can be

funded, or to deluded the Debtor herself that bankruptcy presents a litigation option in her battle with the third-party.

While Debtor is convinced that she is right and that her adversary's position in the property dispute is without merit, that does not entitle Debtor to file bankruptcy, ignore the rights and interest in dispute, and merely mark time for five years in lieu of obtaining a preliminary injunction or stay pending appeal based on the merits of her contentions in the court which is adjudicating those issues.

In looking at the Debtor's schedules and financial information, the court cannot divine any the possible reorganization or restructure of the Debtor's finances through a good faith Chapter 13 case. This highlights the apparent misuse of the Bankruptcy Code as a "free stay pending appeal" as an end around of the appellate stay requirements.

At the hearing, xxxxx

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

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

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

IT IS ORDERED that the Motion to Dismiss is **xxxx**

Final Ruling: No appearance at the August 10, 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on April 20, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the Motion to Dismiss to 10:00 a.m. on September 13, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 20, 2016. Dckt. 55. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

DEBTOR'S REPLY

The Debtor filed a reply on May 4, 2016. Dckt. 59. The Debtors state that both Debtors' income were reduced and medical illnesses arose. This caused the Debtor to fall behind on their payment beginning February 2016. The Debtor states that Debtor Paul Anthony Dumetz was laid off in early 2015 and is now collecting social security income. Debtor Diane Dumetz was diagnosed with cancer in 2013, which led to her ending her employment and collect disability.

The Debtors state that Debtor Diane Dumetz inherited a portion of a residence in San Francisco along with her two other siblings. The Debtor states that the Debtor anticipates that the residence will be listed for sale in June 2016.

The Debtors request that the court continue the motion to provide the Debtors the opportunity to sell the property and get current under the plan.

MAY 18, 2016 HEARING

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,289.12 delinquent in plan payments, which represents multiple months of the \$3,144.56 plan payment. Failure to make plan payments

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

However, in light of the recent inheritance and the substantial amount of funds the Debtors have paid into the plan to date, the court continues the instant Motion to 10:00 a.m. on June 22, 2016.

In continuing the hearing, the court first notes that this bankruptcy case was filed in October 2011. The sixty month plan maximum will be expiring this calendar year. While there is time for Debtor to act, Debtor must act promptly.

Second, Debtor will have to address the sale of the newly acquired property (the interest in the house) as permitted by the Plan (which does not yet provide for the sale) and the Bankruptcy Code (for which court approval is required not only for the sale, but also for hiring the real estate broker). The court cannot tell if the property is being sold as part of a probate or by Debtor and two siblings personally.

The court continued the hearing to 10:00 a.m. on August 10, 2016.

DEBTOR'S REPLY

The Debtor filed a reply on August 1, 2016. Dckt. 79. The Debtor has filed and set for hearing Motion to Sell Real Property and a Motion to Confirm First Modified Plan for 3:00 p.m. on September 13, 2016.

The Debtor requests that the instant Motion be continued to the same date to be heard in conjunction.

DISCUSSION

In light of the Debtor having taken affirmative steps to sell and confirm a plan, the court continues the instant Motion to 3:00 p.m. on September 13, 2016.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 3:00 p.m. on September 13, 2016.

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 May 25, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 35. The Trustee seeks dismissal based on Debtor's delinquency in plan payments.

DEBTOR'S OPPOSITION

Earl Lee Miller III ("Debtor") has filed an opposition on June 8, 2016 Dckt. 39. The Debtor states that his family has encountered a series of illnesses and disability. The Debtor states that he suffered a stroke and was forced to take Workers' Compensation for a period of time.

The Debtor reports that due to his own medical issues and wife's cancer, he has had to withdraw from their daughter's college fund to offset the expenses.

The Debtor states that his wife has returned to work and that he has applied for an emergency withdrawal from his ICMA 547 Deferred Compensation Account.

The Debtor requests the Motion be denied.

JUNE 22, 2016 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on August 10, 2016. Dckt. 41.

DISCUSSION

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$81,900.00 delinquent in plan payments, which represents multiple months of the \$6,825.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, Debtor has not provided evidence that the delinquency has been cured. While the court is sympathetic to the Debtor's struggles, the Debtor does not provide any evidence or testimony as to how the Debtor expects to not only cure the delinquency of \$81,000.00 and to become current. The Debtor is not proposing to modify the plan nor is there any Motion to Modify on file.

It is also troubling that Debtor fails, or refuses, to provide any testimony as to the events which his counsel argues in the Opposition. The court cannot accept as true arguments of an attorney for which there is no evidence.

Notwithstanding these significant deficiencies, the court's sense is that a series of unfortunate, but all too common, life events have befallen Debtor. Rather than dismissing the case, the court continues the hearing to allow Debtor and his counsel to proceed with a modified plan to address these problems.

Debtor and counsel need to substantively address these defaults, and not merely count on the court further continuing the motion to dismiss. To be clear, **DEBTOR AND DEBTOR'S COUNSEL MUST IMMEDIATELY TAKE STEPS TO HAVE THE ARREARAGE CURED, OR HAVE A MODIFIED PLAN SET FOR CONFIRMATION BY THE TIME OF THE CONTINUED HEARING, OR ELSE THE CASE WILL BE DISMISSED!**

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 27, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 27, 2016. Dckt. 32.

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

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

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

The Trustee additionally argues that the Debtor is a serial filer, having filed six different cases since 2011 without any ascertainable change in circumstances.

1. 11-48386-13 - Filed 12/7/11 - Dismissed 12/27/11 - failure to file documents
2. 13-22977-7 - Filed 3/5/13 - Dismissed 3/25/13 - failure to file documents
3. 13-27224-7 - Filed 5/28/13 - Dismissed 8/30/13 - failure to attend 341 meeting of creditors
4. 15-29263-13 - Filed 11/30/15 - Dismissed 4/22/16 - failure to file motion to confirm, delinquency, not providing Trustee with pay advices and her tax forms. No plan payments ever made.
6. 16-22971-13 - Filed 5/6/16 - Dismissed 5/24/16 - failure to file documents; No plan payments ever made.

These repeat filings are only further exasperated by the Debtor failing to complete the Chapter 13 documents, including (1) Section 1.03 of the plan fails to list the duration of the plan; (2) Section 2.15 of the plan fails to provide a dividend to the unsecured creditors; and (3) Debtor lists Shell Point Mortgage in Class 1 yet is also listed on Schedule J and the Trustee cannot determine the proper treatment. This is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2016. Dckt. 72. The Trustee seeks dismissal due to the Debtor's delinquency

Kim Lee and Keri Frances Wong ("Debtor") filed an opposition on July 27, 2016. Dckt. 76. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,570.00 delinquent in plan payments, which represents multiple months of the \$2,010.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

hearing.

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 111. The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,655.00 delinquent in plan payments, which represents multiple months of the \$3,825.00 plan payment. Dckt. 111.

On April 1, 2016 the Chapter 13 Trustee filed a second Motion to Dismiss this case ("Second Motion"). Dckt. 121. The Chapter 13 Trustee alleges in the Second Motion that Debtor was delinquent \$15,305.00 in plan payments. It appears that the Second Motion is a supplement to the original motion.

On April 7, 2016, the Chapter 13 Trustee filed a Notice of Withdrawal dismissing the "Trustee's Motion," asserting that the Debtor paid \$3,825.00 on April 5, 2016 (the amount of default alleged in the original Motion).

DEBTOR'S RESPONSE

Michael and Jennifer Peters ("Debtor") filed an opposition on October 21, 2015. Dckt. 115. Debtor

declares that, after reviewing the Trustee's evidence, they believe the Trustee's records are missing payments for June 2013 and August 2015. Dckt. 116 ¶ 5, 6. Debtor believes that there was some error due to Debtor sending the payments to the Trustee's prior physical address, which had changed in mid-2015. *Id.* at ¶ 5.

The regular October 2015 payment was sent to Trustee on October 16, 2015. *Id.* at ¶ 3. Debtor's counsel alleges that the plan does not have a monthly-cushion to allow them to cure the arrears through a modified plan. Dckt. 115 ¶ 7. Debtor requests a continuance to allow time to review their payment records.

TRUSTEE'S RESPONSE

Trustee filed a response on October 26, 2015. Dckt. 118. Trustee acknowledges receipt of the October 2015 payment, but still declares there is a \$7,655.00 delinquency in the account. Trustee also asserts that, while the physical address did change in mid-2015, Trustee did send numerous changes of address to Debtor. Dckt. 118. Further, the P.O. Box address did not change while Trustee was changing offices. *Id.*

DISCUSSION

The period for the performance of the current plan expired in April 2016 (the maximum sixty months permitted for a Chapter 13 Plan. On June 24, 2016, Debtor filed the certificates for completion of the post-petition financial management course required for entry of a discharge.

Based on the totality of the filings by the Chapter 13 Trustee, it appears that the grounds for dismissal have been resolved and the present Motion should be dismissed.

The Motion to dismiss is dismissed without prejudice.

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

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

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

IT IS ORDERED that the Motion is dismissed without prejudice and the case shall proceed in this court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2016. Dckt. 64. The Trustee seeks dismissal due to the Debtor's delinquency.

("Debtor") filed an opposition on July 252, 2016. Dckt. 68. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,140.00 delinquent in plan payments, which represents multiple months of the \$718.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

hearing.

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

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

51. [14-26567](#)-E-13 SAMUEL TAPIA CONTINUED MOTION TO DISMISS
DPC-4 John Downing CASE
4-18-16 [[67](#)]

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, and the bankruptcy case shall proceed in this court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 13, 2016. Dckt. 144. The Trustee seeks dismissal due to

("Debtor") filed an opposition on July 25, 2016. Dckt. 148. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,355.00 delinquent in plan payments, which represents multiple months of the \$1,085.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

53. [15-23469-E-13](#) **TERESA/WELDON PILLOW** **MOTION TO DISMISS CASE**
DPC-3 **Nima Vokshori** **7-12-16 [102]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2016. Dckt. 102. The Trustee seeks dismissal due to Debtor being in default on the Plan payments.

N. Stephen Vokshori ("Attorney for Debtor") filed a declaration on July 27, 2016. Dckt. 106. The Attorney for Debtor states that the Debtors are presently separated and that Mr. Pillow was released from the hospital on July 24, 2016. The Debtors wish to be afforded the opportunity to consider their options with respect to this bankruptcy.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,085.62 delinquent in plan payments, which represents multiple months of the \$1,028.54 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 43.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$385.00 delinquent in plan payments, which represents multiple months of the \$130.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

55. [16-23370-E-13](#) **BARRY MCGWIRE**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-28-16 [21]**

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 Barry McGwire ("Debtor"), Trustee, and other parties in interest on June 28, 2016. The court computes that 43 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on June 23, 2016).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$79.00].

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016. Dckt. 23.

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

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

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

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

57. [13-25172](#)-E-13 **RODNEY/MARSHA ROBINSON** **MOTION TO DISMISS CASE**
DPC-5 **Diana Cavanaugh** **7-12-16 [38]**

Final Ruling: No appearance at the August 10, 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, and the case shall proceed in this court.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 13, 2016. Dckt. 45. The Trustee seeks dismissal due to

Robin Bugbee ("Debtor") filed an opposition on July 27, 2016. Dckt. 49. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,850.00 delinquent in plan payments, which represents multiple months of the \$1,925.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

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

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

59. [16-22972-E-13](#) ELIZABETH BARRIOS
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-12-16 [\[26\]](#)

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Elizabeth Barrios (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 12, 2016. The court computes that 29 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$77.00 due on July 5, 2016).

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

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 12, 2013. Dckt. 87. The Trustee seeks dismissal due to the Debtor's delinquency.

Jesse Montanez ("Debtor") filed a non-opposition on July 22. Dckt. 91.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$879.00 delinquent in plan payments, which represents multiple months of the \$293.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

dismissed.

61. [12-28877](#)-E-13 **JOEL SANCHEZ** **MOTION TO DISMISS CASE**
DPC-1 **Aaron Koenig** **7-12-16 [43]**

Final Ruling: No appearance at the August 10, 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, and the case shall proceed in this court.

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 Andres Suarez ("Debtor"), Trustee, and other parties in interest on July 1, 2016. The court computes that 40 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on June 27, 2016).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$76.00].

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

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

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

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 27, 2016. Dckt. 49. The Trustee seeks dismissal due to the Debtor's delinquency and unreasonable delay in filing a new plan.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,160.00 delinquent in plan payments, which represents multiple months of the \$300.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to

creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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.

65. [14-30278](#)-E-13 **GARY SHREVES AND KAREN** **MOTION TO DISMISS CASE**
 DPC-4 **BAYSINGER- SHREVES** **7-12-16 [[145\]](#)]**
 Mark Wolff

Final Ruling: No appearance at the August 10, 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 August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016. Dckt. 62.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$825.00 delinquent in plan payments, which represents multiple months of the \$275.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

67. [15-29079-E-13](#) **RUTH AUSTIN** **CONTINUED MOTION TO DISMISS**
 DPC-1 **Mark Wolff** **CASE**
 4-20-16 [30]

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on April 20, 2016. Dckt. 30. The Trustee seeks dismissal based on the Debtor's delinquency in plan payments.

DEBTORS' OPPOSITION

The Debtor filed an opposition on May 4, 2016. Dckt. 34. The Debtor acknowledges that she is behind in payment. However, the Debtor states that money was stolen from her bank account by an unknown person in the amount of \$4,500.00. Dckt. 35.

The Debtor states she is attempting to get the bank to reimburse her the money stolen from her account and that she will be filing a Motion to Sell her real property. The Debtor asserts that through the sale of the real estate, Debtor will receive \$5,000.00 for relocation. Since Debtor is not anticipating moving from her current location until September 2016, the Debtor argues that she can use the funds received from the sale to become current.

MAY 18, 2016 HEARING

Debtor has filed a Motion to approve the short sale of her residence. Dckt. 37. A copy of the contract to sell the property is filed as Exhibit 1 in support of the Motion to Sell. Dckt. 40. In reviewing the ALTA Settlement Statement for sell, it lists a JDK & Associates receiving a real estate commission of \$8,811,89 for the \$449,000.00 sales of the property. This is a two-percent sales commission.

The court continued the hearing to afford Debtor the opportunity to employ a real estate broker, sell the property, and modify the plan as may be necessary to take this asset into account this newly identified asset.

TRUSTEE'S SUPPLEMENTAL PLEADINGS

The Trustee filed a supplement to the Motion on July 13, 2016. Dckt. 57. FN.1.

FN.1. The court is treating the Trustee's second Motion to Dismiss as a responsive pleading for the instant continued Motion to Dismiss and will be discussed supra.

The Trustee reports that the Debtor is delinquent \$5,000.00.

DEBTOR'S OPPOSITION

The Debtor filed a supplemental opposition on July 25, 2016. Dckt. 62. The Debtor states that she plans to be current from the sale of the residence. The sale transaction has not yet completed and is anticipated to be completed prior to hearing.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,000.00 delinquent in plan payments, which represents multiple months of the \$1,000.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured. The Debtor provides testimony that \$4,500.00 was stolen from her bank account. However, rather than proposing a modified plan to cure the delinquency, the Debtor is requesting that the court allow the case to continue in its delinquent state until such undisclosed time that the Debtor sells her real property.

The court had previously offered such a continuance but after three months, the Debtor's delinquency has just grown.

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.

68.	<u>15-29079</u> -E-13 DPC-2	RUTH AUSTIN Mark Wolff	MOTION TO DISMISS CASE 7-13-16 [57]
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The court construing this second Motion to Dismiss to be a responsive pleading to the Trustee's first continued Motion to Dismiss, the Trustee's Motion and Debtor's response is discussed in connection with the Motion to Dismiss [DCN: DPC-1]

69. [16-22480](#)-E-13 SEAN/JENNIFER PARSONS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-25-16 [49]**

DEBTOR DISMISSED:

07/26/2016

JOINT DEBTOR DISMISSED:

07/26/16

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Sean and Jennifer Parsons ("Debtors"), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 25, 2016. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay one or more installment payments.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on July 26, 2016 (Dckt. 50), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

70. [16-22480](#)-E-13 SEAN/JENNIFER PARSONS MOTION TO DISMISS CASE
DPC-2 Pro Se 7-13-16 [[45](#)]

DEBTOR DISMISSED:

07/26/2016

JOINT DEBTOR DISMISSED:

07/26/2016

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

71. [11-36981](#)-E-13 MONICA SAECHAO MOTION TO DISMISS CASE
DPC-8 Sally Gonzales 7-27-16 [[104](#)]

Final Ruling: No appearance at the August 10, 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.**

72. [15-21082](#)-E-13 STEVEN/MARIA PETERSON MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 7-12-16 [[52](#)]

Final Ruling: No appearance at the August 10, 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 12, 2016.
Dckt. 52.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$470.00 delinquent in plan

payments, which represents multiple months of the \$235.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

Final Ruling: No appearance at the August 10, 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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 13, 2016.
Dckt. 96.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$340.00 delinquent in plan payments, which represents multiple months of the \$120.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

74. [14-23387](#)-E-13 GREGG/NANITA SCHILLER MOTION TO DISMISS CASE
DPC-1 Muoi Chea 7-12-16 [[52](#)]

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.

75. [16-22887](#)-E-13 **RANDALL OWENS AND RYAN** **ORDER TO SHOW CAUSE - FAILURE**
 WATERS **TO PAY FEES**
 Peter Macaluso **6-7-16 [15]**

Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Randall Owens and Ryan Waters (“Debtors”), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 7, 2016. The court computes that 64 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$79.00 due on June 2, 2016).

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

76.	<u>16-22887</u> -E-13	RANDALL OWENS AND RYAN WATERS Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-7-16 [<u>19</u>]
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Final Ruling: No appearance at the August 10, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Randall Owens and Ryan Waters (“Debtors”), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 7, 2016. The court computes that 34 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 5, 2016).

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

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

77. [12-36688](#)-E-13 DONALD TO AND KAREN CAO MOTION TO DISMISS CASE
DPC-2 Kristy Hernandez 7-13-16 [[104](#)]

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, and the bankruptcy case shall proceed in this court.

78. [15-28690](#)-E-13 **LISA SLEDGE**
DPC-1 **Chad Johnson**

MOTION TO DISMISS CASE
7-12-16 [33]

Final Ruling: No appearance at the August 10, 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.

**APPEARANCE OF RICHARD JARE, COUNSEL FOR DEBTOR
REQUIRED FOR HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$319.51 delinquent in plan payments, which represents multiple months of the \$115.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed an opposition on July 27, 2016. Dckt. 64.

The Debtor opposes dismissal, advising the court that her plan will be completed in December 2016. She is working on curing the default and dismissal of the case would be an undue prejudice in light of the circumstances of this case. As a reason for the default, Debtor's counsel argues in the Opposition, "I believe she was very busy as she is in the midst of a pregnancy and simply forgot to pay." Dckt. 66. Counsel's "belief" is not fact, and this is an allegation for which evidence

could easily be provided and it stated as an affirmative allegation.

In her declaration Debtor superimposes screen shots from the Trustee's payment website as part of the declaration. Dckt. 67. This is problematic for several reasons. The screen shots are not her testimony, but merely an exhibit. Exhibits are filed as separate documents and not as part of a declaration, motion, objection, or points and authorities. L.B.R. 9004-1 and the Revised Guidelines for Preparation of Documents. Additionally, Debtor fails to testify that she obtained the screen shots, that she can authenticate the screen shots by her personal testimony, and that she does so state under penalty of perjury. It is as if someone (such as she counsel or counsel's secretary) obtained the screen shots, improperly placed them in the declaration, and the Debtor signed them, irrespective of truth or personal knowledge, because "it lets me WIN!!!"

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 July 13, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on July 13, 2016. Dckt. 68. The Trustee seeks dismissal due to the Debtor's delinquency and the Debtor's failure to have a plan confirmed.

Cassius Bell ("Debtor") filed an opposition on July 25, 2016. Dckt. 72. The Debtor states that they are current and will file and set for hearing a new Amended Plan on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$783.00 delinquent in plan payments, which represents one month of the \$783.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 14, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

On August 5, 2016, Debtor filed a Third Amended Plan. Dckts. 78. The court has reviewed the

Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckts. 75, 77.

Unfortunately, the Motion does not appear to comply with the basic pleading requirements of Federal Rule of Bankruptcy Procedure 9013 and states with particularity only the following grounds upon which Debtor seeks to confirm the Amended Chapter 13 Plan:

- A. This is a core proceeding;
- B. The 3rd Amended Plan complies with all of the requirements of 11 U.S.C. §§ 1330 et seq;
- C. The 3rd Amended Plan represents the Debtor's "Best Efforts;"
- D. The Debtor never confirmed the 2nd Amended Plan;
- E. The 3rd Amended Plan provides for:
 - 1. \$159.00 for six months, and
 - 2. \$783.00 for forty-nine months;
- F. The Plan pays off Debtor's Third Savings Plan loan in full (loan to Debtor from his own retirement account).
- G. Debtor decreases his previously stated under penalty of perjury: (1) monthly homeowner's expense of \$150.00 to \$50.00, (2) monthly pet expenses of \$150.00 to \$50.00; and increase his monthly water/sewer expenses from \$150.00 to \$247.00 due to the installation of water meters.
- H. The Plan provides for no less than a 58% dividend to creditors holding general unsecured claims.
- I. The Plan further provides that Debtor and Debtor's spouse shall retain \$2,000.00 of all future tax refunds, turning over only the amount in excess of \$2,000.00 per year in overwithholding or overpayment of estimated taxes.

This pleading fails to state with particularity the grounds for confirmation required under 11 U.S.C. §§ 1325 and 1322. At best, it tries to state that "Debtor has complies all the possible laws, so confirm the plan." This is akin to pleading the legal conclusion that "defendant committed a tort, so plaintiff wins" in a complaint under the lesser "short and plain statement of the claim showing that the pleader is entitled to relief" required in Federal Rule of Civil Procedure 7(a)(2) and Federal Rule of Bankruptcy Procedure 7007. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007).

Debtor's declaration offers little to provide the court with credible, personal knowledge testimony of facts upon which the court can make the necessary findings of fact and conclusions of law. The Declaration, Dckt. 77, provides the following "testimony;"

- A. Debtor is the petitioner in this bankruptcy case;
- B. Debtor's personal legal conclusion that, "The Third Amended Chapter 13 Plan has been proposed in good faith," (Declaration ¶ 2);
- C. Debtor's personal factual finding and personal conclusion of law, "The value, as of the effective date of the plan, of property to be distributed under the plan to allowed unsecured claims is not less than the amount such claims would receive under a Chapter 7," (Declaration ¶ 3);
- D. Debtor's parroting of the Bankruptcy Code, which appears to show that Debtor has no personal knowledge of the actual terms of his plan, that, "The plan provides that the holder of a secured claim retains the lien securing such claim until either the underlying debt is paid or a discharge is entered under § 1328 and the value of property to be distributed under the plan is not less than the allowed amount of such secured claim," (Declaration ¶ 4);
- E. Debtor provides no testimony as to how now he can so substantially reduce his home maintenance expenses by 67% and pet expenses by 50%, and why his testimony under penalty of perjury of this expense is credible in light of his prior statements under penalty of perjury that the higher expenses were reasonable and necessary.
- F. Debtor now states that his monthly water and sewer expense will be \$247.00, which totals \$3,000.00 a year. Other than saying that he is now on a water meter, Debtor offers no explanation as to why he has such a light water and sewer expense.
- G. Debtors' personal legal conclusion that "My 3rd Amended Chapter 13 plan complies with applicable law," (Declaration ¶ 14);
- H. Debtor's personal finding of fact and personal legal conclusion that "The proposed 3rd Amend Plan represents my Best Effort," (Declaration ¶ 15);

The court, for more than six years now, has repeatedly addressed with the attorneys and parties appearing in this court the difference between motions and complaint, and declarations and witness testimony. Debtor's counsel has appeared regularly in this court for more than six years, so the basic pleading requirements and the personal knowledge testimony is nothing new.

While much of what Debtor has chosen or been made to testify to under penalty of perjury are the "legal grounds" which much be stated with particularity in the Motion, sticking them in a declaration does not comply with Federal Rule of Bankruptcy Procedure 9013. The court uniformly applies these basic pleading rules to all attorneys and parties, not leaving attorneys to guess when the Rules will be followed and when the Rules can be ignored.

As for Debtor's testimony, it raises very disturbing questions concerning Debtor's good faith in this case. Debtor has chosen to sign a declaration and state under penalty of perjury a number of legal conclusions. Nothing has been provided to the court that he has such legal training and knowledge so as

to state such legal opinions. Further, if he has such training and knowledge, then he would know that such legal conclusions by a witness carry no weight and are improper.

Debtor chooses to just reduce expenses, offering no explanation. Presumably Debtor and Counsel knew that given the Chapter 13 Trustee's prior objections and this court's rulings denying confirmation of the prior plans something more than "believe me this is the accurate number, this time" would be sufficient. See Civil Minutes, Dckts. 63, 43, and 38 (including the Chapter 13 Trustee's objection that Debtor is above median income and any plan with a term of less than sixty months is not confirmable).

After more than six years of warnings, notice, corrective pleadings, and education among all the attorneys of these basic pleading requirements and basic evidentiary requirements for testimony under penalty of perjury, no good grounds exist to merely continue the hearing and give Debtor and counsel the opportunity to "do it right." Electing to not follow these basic Rules is not a "no cost" opportunity to try and "slip it by the court," and if caught, and only if caught, for counsel and the party to do it right.

Cause exists to dismiss this case. Debtor is not prosecuting this case, is not prosecuting this case in good faith, and is causing unreasonable delay. 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 August 10, 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 May 25, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is continued to 10:00 a.m. on September 7, 2016.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 25, 2016. Dckt. 133. The Trustee seeks dismissal due to material default by the debtor with respect to a term of a confirmed plan and delinquency in payments under the plan.

DEBTOR'S OPPOSITION

Michelle Merlin Neumann ("Debtor") has filed opposition to the instant motion on June 8, 2016 Dckt. 137. The Debtor declared that Debtor will begin new employment on June 20, 2016 and anticipates earning more money than he is with his current job. Debtor's counsel is unable to draft an amended plan in good faith until she has had an opportunity to review Debtor's new financial information, which she does not expect to have by the time of the June 22, 2016 hearing.

TRUSTEE'S REPLY

The Trustee filed a reply on June 14, 2016. Dckt. 139. The Trustee states that he has no opposition to the Motion being continued to the August 10, 2016 hearing date.

JUNE 22, 2016 HEARING

In light of both the Trustee and Debtor consenting to continuing the instant Motion and for good cause, the court continued the instant Motion to Dismiss to 10:00 a.m. on August 10, 2016.

STIPULATION

On August 5, 2016, the Debtor and the Trustee filed a joint stipulation to continue the instant hearing. The stipulation states that due to an employer's payroll error, the Debtor has not received his first

paycheck. Debtor has been unable to provide his counsel with an earnings statement to draft an amended plan.

The parties stipulate to continue the instant hearing to 10:00 a.m. on September 7, 2016.

DISCUSSION

In light of the stipulation filed by the Debtor and the Trustee and cause showing, the court continues the instant hearing to 10:00 a.m. on September 7, 2016.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on September 7, 2016.

Final Ruling: No appearance at the August 10, 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, and the bankruptcy case shall proceed in this case.

83. [15-27295](#)-E-13 **ERROL/ALITA MERCADO** **MOTION TO DISMISS CASE**
DPC-1 **Richard Jare** **7-12-16 [49]**

Final Ruling: No appearance at the August 10, 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 August 10, 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 August 10, 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 June 29, 2016. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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.
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David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on June 29. Dckt. 26.

The Debtor has failed to respond to the instant Motion.

The Trustee argues that the Debtor did not commence making plan payments and is \$1,699.00 delinquent in plan payments, which represents multiple months of the \$1,699.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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.

86. [13-34597-E-13](#) **VAN PHAM** **MOTION TO DISMISS CASE**
DPC-1 **Michael Croddy** **7-12-16 [63]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on June 12, 2016. Dckt. 63. The Trustee seeks dismissal due to the Debtor's delinquency.

Van Tuyet Pham ("Debtor") filed an opposition under penalty of perjury on July 27, 2016. Dckt. 67. The opposition states, "The above named Debtor *has* filed a 2nd Modified Chapter 13 Plan and set it for confirmation." Dckt. 67.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,372.94 delinquent in plan payments, which represents multiple months of the \$591.00 plan payment. Failure to make plan

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

After a review of the docket and pending filings, the court is unable to find a Second Modified Chapter 13 Plan. In fact, there is no proposed plan nor Motion to Confirm filed after the filing of the present Motion to Dismiss.

Debtor did file a proposed First Modified Chapter 13 Plan on October 17, 2015, (Dckt. 49), which was denied confirmation on December 11, 2015 (Order, Dckt. 62). The court denied confirmation due to Debtor failing to provide all of the projected disposable income into the plan. Civil Minutes, Dckt. 60.

Debtor is not prosecuting this case and Debtor has been “pocketing” at least \$252.00 a month for multiple months now. Given Debtor’s finances, it appears that Debtor has now dug a deep financial hole in which he will be unable to have the monies to payback these diverted projected disposable income amounts, necessitating Debtor filing a new case and starting the good faith funding of a plan all over.

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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on June 12, 2016. Dckt. 132. The Trustee seeks dismissal due to the Debtor's delinquency.

Parker Emanuel Pugh and Donna Pugh ("Debtor") filed an opposition on June 22, 2016. Dckt. 136. The Debtor states that they will be current on or before the hearing date.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$745.00 delinquent in plan payments, which represents one month of the \$745.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

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

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

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

hearing.

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

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

88. [15-27799-E-13](#) **MARK LUNA** **MOTION TO DISMISS CASE**
 DPC-1 **Michael Benavides** **7-12-16 [29]**

Final Ruling: No appearance at the August 10, 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 July 12, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on June 12, 2016. Dckt.29.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,715.00 delinquent in plan payments, which represents multiple months of the \$2,000.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to respond to the instant Motion.

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

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

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

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

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