

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

September 7, 2016, at 10:00 a.m.

1.	<u>15-29555</u> -E-13	DIANNE AKZAM	CONTINUED MOTION TO VACATE
	DA-1	Pro Se	7-15-16 [<u>75</u>]

<p>The court's decision is to continue the hearing on the Motion to Vacate the Order Granting Relief From the Automatic Stay to 3:00 p.m. on xxxxxxxx, 2016.</p>

AUGUST 30, 2016 HEARING

At the hearing, the court continued the matter to September 7, 2016, at 10:00 a.m. (specially set with the court's Chapter 13 Dismissal Calendar) as a status conference for U.S. Bank, National Association, as Trustee, to report to the court when it will produce the promissory note endorsed in blank for which it is asserting the right to proceed with a non-judicial foreclosure sale.

DISCUSSION

At the hearing, **xxxxxxx**.

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

Upon review of the motion, opposition, evidence, extensive oral arguments presented by Debtor and counsel for U.S. Bank, National Association, as Trustee, and good cause appearing,

IT IS ORDERED that the hearing that the Motion to Vacate the Order Granting Relief From the Automatic Stay is continued to **3:00 p.m. on xxxxxxxxxx, 2016**; at which time a representative of U.S. Bank, N.A., as Trustee, shall present in open court the promissory note, endorsed in blank, that is at issue in Debtor disputing the Creditor's standing to seek relief from the automatic stay.

September 7, 2016, at 10:00 a.m.

2. [16-23802-E-13](#) **ADRIAN PEREZ**
Pro se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-17-16 [\[38\]](#)

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 Adrian Perez ("Debtor"), Trustee, and other parties in interest on August 17, 2016. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$56.00 due on August 12, 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 that is the subjection of the Order to Show Cause has not been cured. The following filing fee is delinquent and unpaid by Debtor: \$56.00.

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 September 7, 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 and Office of the United States Trustee on August 4, 2016. By the court's calculation, 34 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 on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and 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 that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

arguments of counsel, and good cause appearing,

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

4. **16-23603-E-13** **STACY TUCKER**
DPC-2 **Matthew Gilbert**

MOTION TO DISMISS CASE
8-22-16 [22]

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 August 22, 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. At the hearing -----
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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 \$813.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues also that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 16, 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 that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

5. **14-30704-E-13 KEVIN FLOYD MOTION TO DISMISS CASE**
 DPC-5 W. Scott de Bie 8-9-16 [86]

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,750.00 delinquent in

plan payments, which represents multiple months of the \$2,875.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

6. [14-26806-E-13](#) **ROY/MERLIN BAZA** **MOTION TO DISMISS CASE**
DPC-1 **W. Scott de Bie** **8-9-16 [31]**

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on August 31, 2016, Dckt. 45; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 45, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 \$3,857.95 delinquent in plan payments, which represents multiple months of the \$1,643.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 19, 2016. Dckt. 62. The Opposition states that Debtor will be current on or before the hearing on this matter. Unfortunately, a promise to be current is not evidence of such.

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

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

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

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

arguments of counsel, and good cause appearing,

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

8. [12-21207-E-13](#) **JIM LEDESMA** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **8-9-16 [149]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 \$2,767.92 delinquent in plan payments, which represents multiple months of the \$2,675.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 19, 2016. Dckt 153. The Opposition states that Debtor will be current on or before the hearing on this matter. Unfortunately, a promise to be current is not evidence of such.

Motion Alleging Violation of the Automatic Stay

Debtor has filed a Motion alleging a violation of the automatic stay by Capital One, N.A. (“Capital One”) on grounds stated as:

- A. “[C]apital One has denied a post-petition loan modification, which they offered to the Debtor and accepted payments of \$922.64 per month for May, June and July of 2016.”
- B. “After the Debtor made the payments, Capital One did send a denial letter claiming the application was incomplete, and has kept the trial loan modification payments, and not returned, nor accounted for them in the bankruptcy case.”
- C. “Here, an actual controversy now exists between the Debtor and Capital One in that the loan modification was arbitrarily denied and Capital One remains in the possession of the post-petition trial loan modification payments.”
- D. “The Debtor seeks to cease of harassment by Capital One and a return of the funds paid to complete the Chapter 13 plan. . . .”

Dckt. 155.

Under the terms of the Confirmed Second Modified Plan, Dckt. 92, no provision is made to pay a claim of “Capital One, N.A.” It appears that Debtor misidentified the creditor with the Class 1 claim to be paid through the Plan as Bank of America, N.A. See Proof of Claim No. 3, filed February 29, 2012, in which the creditor is identified as Capital One, N.A. and Bank of America, N.A. is identified as the person to whom the payments are to be sent (presumably the loan servicer).

The court’s review of the file does not indicate that the Debtor has sought, nor has the court authorized, to enter into a post-petition financing transaction with Capital One, N.A. to modify, whether on a trial or permanent basis, the loan for which payment is provided for under the Confirmed Second Modified Plan.

The Confirmed Second Modified Plan specifies that the Debtor has funded the plan with payments of \$79,945.61 through October 2015, will then make monthly payments of \$2,675.00 for seven months starting in November 2015, and then decreasing the payments to \$2,425.00 for eight months. Dckt. 92. Each monthly payment would be disbursed in the amounts of: (1) \$1,752.00 as the current monthly payment due “Bank of America, N.A.,” (2) \$515.50 to pay the pre-petition arrearage on the “Bank of America, N.A.” claim; (3) \$123.43 for the post-petition arrearage on the “Bank of America, N.A.” claim; (4) \$23.00 to the City of Sacramento for its Class 2 Claim; (5) \$0.00 for the “Ocwen/Bank of America - 2d DOT” Class 2 Claim; (6) the Internal Revenue Service Class 5 tax claim; and (7) a 2% dividend on the Class 7 general unsecured claims.

It appears, notwithstanding the terms of the Confirmed Second Amended Plan, Debtor unilaterally reduced his plan payments to \$1,752.36 beginning in May 2016. See Trustee’s Motion to Dismiss, Chart of Payment embedded in Motion. Dckt. 149. This appears to be corroborated by Debtor’s Motion alleging the violation of the automatic stay, stating: “Capital One has denied a post-petition loan modification, which they offered to the Debtor and accepted **payments of \$922.64 per month for May, June and July of 2016.**” Dckt. 155 (emphasis added).

It appears that Debtor elected to breach his Chapter 13 Plan, believing that it was financially advantageous to pursue unauthorized loan modification payments than comply with his Plan, as well as to have his attorney seek authorization for post-petition financing in the form of a trial or final loan modification. (The loan modification “offer” letter was sent to Debtor’s former counsel of record in this case, not merely to the Debtor directly. Exhibit 1, Dckt. 158.)

Cause exists to dismiss this case. The motion is granted, and the case is dismissed. Though dismissed, this court is not deprived of jurisdiction to address all issues relating to this bankruptcy case, including alleged violations of the automatic stay.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); *see* 11 U.S.C. § 105(a).

The court shall issue a minute 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. The court has, and expressly retains to insure that all parties in interest are aware, to address all issues and matters pertaining to this bankruptcy case and the conduct of parties relating thereto, including alleged violations of the automatic stay, notwithstanding the dismissal of this case.

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,822.00 delinquent in plan payments, which represents multiple months of the \$1,456.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the September 7, 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, Debtors' Attorney, and Office of the United States Trustee on August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,200.00 delinquent in plan payments, which represents multiple months of the \$3,800.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

**APPEARANCE OF MIKE HAMMER, DEBTOR (PRO SE) ORDERED
FOR SEPTEMBER 7, 2016 HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

Notice Provided: The Order to Show Cause was served by the Clerk of the Court through the Bankruptcy Noticing Center on Debtor (*pro se*), Chapter 13 Trustee, Office of the U.S. Trustee, and U.S. Attorney's Office on August 14, 2016. 24 days' notice was provided.

The court's decision is to XXXXXXXXXXXXXXXXXXXX.

The court issued this Order to Show Cause on August 12, 2016, for Debtor Mike Hammer to appear personally and show cause as to why the court should not issue an order dismissing the case, and why that dismissal should not include the following provisions pursuant to 11 U.S.C. §§ 105, 349, 362(d)(4), and the inherent power of the federal court:

- A. Issuance of an injunction or bar on the filing of further bankruptcy cases by Mike Hammer in that name or any other name or alias, for a period of eight years, unless prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.
- B. Imposition of sanctions pursuant to the statutory and inherent powers of this court to control the proceedings and parties seeking relief from the court.
- C. Imposition of sanctions as provided by Federal Rule of Bankruptcy Procedure 9011.
- D. Requiring that the Debtor pay all filing fees at the time a new case is commenced, and prohibiting him from obtaining a fee waiver or authorization to pay filing fees in installments.
- E. Ordering the Debtor to pay an amount equal to the unpaid filing fees to the Eastern District of California for the prior cases filed in the Eastern District of California at the time any future bankruptcy case is filed during the eight-year period.
- F. Authorizing and ordering the Office of the Clerk not to file any bankruptcy petition filed by Mike Hammer, in that name or using any alias, which is not approved for filing by the Chief Bankruptcy Judge of the District in which Mike Hammer attempts to file a bankruptcy case.

Additionally, the court ordered that any Response or Opposition to the Order to Show Cause shall be in writing and filed with the court and served on the U.S. Trustee, Chapter 13 Trustee, and U.S. Attorney on

or before September 1, 2016. The court stated that replies to any Response or Opposition filed by Debtor may be presented orally at the hearing, with the court setting such further briefing schedules as appropriate, if necessary.

No Response or Opposition has been filed to date.

SEPTEMBER 9, 2016 ORAL ARGUMENT

At the September 9, 2016 hearing, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

DISCUSSION

The court has reviewed the filings in the above-captioned case and the court's files relating to other bankruptcy cases filed by Debtor. In this bankruptcy case, Debtor provides the following information under penalty of perjury on his Schedules and Statement of Financial Affairs.

Schedule A Real Property, Dckt. 26 at 3:	No Real Property Interests
Schedule B Personal Property, <i>Id.</i> at 4-5:	Vehicles....."N/A" All Other Personal Property.....None
Schedule C Exempt Property, <i>Id.</i> at 6:	"TBD"
Schedule D Secured Claim, <i>Id.</i> at 7:	"N/A"
Schedule E Priority Unsecured Claims, <i>Id.</i> at 8:	None
Schedule F General Unsecured Claims, <i>Id.</i> at 9:	"TBD"
Schedule G Executory Contracts and Unexpired Leases, <i>Id.</i> at 10	None
Schedule H Codebtor, <i>Id.</i> at 11:	None
Schedule I Income, <i>Id.</i> at 12-13:	"TBD"
Schedule J Expenses, <i>Id.</i> at 14-15:	"TBD"
Statement of Financial Affairs, Part 1, <i>Id.</i> at 17	Lived at same address for prior three years. Address on Petition: 11140 Sun Center Drive, Rancho Cordova, California
Statement of Financial Affairs, Income From Wages or Business, Part 2, <i>Id.</i> at 18	2016 YTD....."TBD" 2015....."TBD" 2014....."TBD"

Statement of Financial Affairs, Other Income, Part 2, <i>Id.</i> at 18	2016 YTD....."TBD" 2015....."TBD" 2014....."TBD"
Statement of Financial Affairs, Identification of any business during the prior four year Part 11, <i>Id.</i> at 27	None
	No ownership interests in any businesses listed on Schedule B.

On the Petition, Debtor lists as the names of "Any business and employer identification numbers used in the prior eight years" the following, "DBA/AKA: Global Technologies, LP" (business name) with an EIN ending in 3927. Dckt. 1 at 2.

Debtor also lists a mailing address of 82-5988-B Napoopoo Rd., Captain Cook, Hawaii. *Id.*

The address of Debtor's residence, 11140 Sun Center Drive, Rancho Cordova, California, is in an area commonly known as industrial commercial property, not a residential property.¹ The court takes judicial notice that this is a commercial, not a residential, property. Fed. R. Evid. 201.

On July 13, 2016, Debtor filed a pleading titled "Chapter 13 Plan." Dckt. 28. The "Plan" provides for Debtor to make \$25.00 a month payment for a period of sixty months. The following treatment is provided for claims under the Plan:

- A. Class 1 Secured....."TBD"
- B. Class 2 Secured....."N/A"
- C. Class 3 Secured, Surrender....."N/A"
- D. Class 4 Secured....."N/A"
- E. Class 5 Priority Unsecured....."TBD"
- F. Class 6 Special Treatment Unsecured....."N/A"
- G. Class 7 General Unsecured.....0% Dividend on \$0.00 of Unsecured Claims

Id.

While titled "Chapter 13 Plan," the Plan is devoid of any confirmable plan terms. No motion nor supporting pleadings to confirm a plan have been filed.

Using Debtor's Social Security Number, the court identifies the following additional cases which are linked to this Debtor:

- A. Jon Michayl Hammer, No. 15-29758 (same Social Security number as Mike Hammer and same EIN as Tinley Britt); and

¹ Google Maps identifies this as a FedEx shipping center, not residences.

- B. Tinley Britt, No. 16-21623 (same Social Security Number as Mike Hammer and same EIN as Jon Michayl Hammer).

A search of the court's files for the last name "Hammer" discloses that there is another Chapter 13 case filed by "Michael Hammer," Case No. 15-27345. On the Petition, the Debtor lists his address as "5454 Sunrise Blvd," a mailing address of Maholoo, LLC, 22837 Pacific Coast Highway, Malibu, CA, and a location of principal assets of Debtor as "82-5988 Napoopoo Rd, Apt. B, Captain Cook, Hawaii." This principal asset address is the same as the mailing address given by "Mike Hammer" in the current Chapter 13 case before the court.

A review of these prior bankruptcy cases filed just in the Eastern District of California linked to the Debtor is summarized as follows:

I. Chapter 13 Case No. 15-27345, filed on September 18, 2015, by "Michael Hammer," which was dismissed by order entered on January 22, 2016.

- A. The Bankruptcy Petition provides the following information about debtor "Michael Hammer:"

1. All other names
 - a. dba/aka Maholoo, LLC
 - b. aka U.S. National Mktg. B. McGwire
2. Last four digits of Social Security No. 2430
3. Residence: 545 Sunrise Blvd, Citrus Heights, California
4. Mailing Address
 - a. Maholoo, LLC, 22837 Pacific Coast Highway, Malibu, California
 - b. Location of Principal Assets of Business
 - (1) 82-5988 Napoopoo Rd, Apt. B, Captain Cook, Hawaii.

Case No. 15-27345, Dckt. 1. The California Secretary of State lists no registration information for any Limited Liability Company in California with the name "Maholoo, LLC." <http://kepler.sos.ca.gov/>. The Social Security Number listed on the Statement of Social Security Number for "Michael Hammer" (Case No. 15-27345, Dckt. 4) does not match to a Social Security Number in any of the other cases.

- B. Schedule and Statement of Financial Affairs; Case No. 15-27345, Dckt. 22, provides the following information:

Schedule A, Real Property, <i>Id.</i> at 3	23873 P.C.H. Malibu, CA Value of Debtor's Interest.....\$250,000 Secured Claims....."N/A"
Schedule B, Personal Property, <i>Id.</i> at 4-5	Cash.....\$200 All other Personal Property....."FWD"

Schedule C, Exempt Property, <i>Id.</i> at 6.	“N/A”
Schedule D, Secured Claims, <i>Id.</i> at 7	“TBD”
Schedule E, Priority Unsecured Claims, <i>Id.</i> at 8	None
Schedule F, General Unsecured Claims, <i>Id.</i> at 9	“N/A”
Schedule I, Income, <i>Id.</i> at 12-13	<p>Self Employed Occupation.....”Mkgt”</p> <p>Employer Address 22837 P.C.H., Malibu, CA (Address for Maholoo, LLC)</p> <p>Monthly Gross Wages, Salary, Commissions.....\$2,300.00</p> <p>Withholding, Tax/Social Security Total.....(\$ 100.00)</p>
Schedule J, Monthly Expenses; <i>Id.</i> at 14-15	<p>Total.....(\$2,200.00)</p> <p>Rent/Mortgage.....(\$800) Property Taxes.....None Property Insurance.....None Home Maintenance.....None Electricity/Gas.....(\$200) Water/Sewer/Garbage.....(\$100) Telephone/Cell/Cable.....(\$100) “Other,” Not Specified.....(\$800) Food/Housekeeping.....None Clothing/Laundry.....None Personal Care Products.....None Medical/Dental Expense.....None Transportation.....(\$200) (No vehicles on Sch. B) Vehicle Ins.....None Health Ins.....None Taxes.....None</p>

Statement of Financial Affairs, Question 1, Income From Employment or Business; <i>Id.</i> at 18.	“\$2,300....Marketing” No information for filing year to date or two prior years.
Statement of Financial Affairs, Question 2, Other Income; <i>Id.</i>	None
Statement of Financial Affairs, Question 18, Nature and Name of Business; <i>Id.</i> at 24-25.	None

For the Chapter 13 Plan in the Michael Hammer Chapter case, the monthly plan payment is stated to be \$25.00. For the claim, the proposed treatment is:

1. Treatment of Class 1 thorough Class 6 Claims.....”N/A”
2. Class 7 General Unsecured Claims.....0% Dividend on \$0.00 General Unsecured Claims.

Chapter 13 Plan; *Id.*, Dckt. 23.

3. The Michael Hammer Chapter 13 case was dismissed due to the failure of that debtor to pay a \$79.00 filing fee installment. *Id.*; Order, Dckt. 40. An order dismissing the case was also entered for that debtor’s failure to attend the First Meeting of Creditors, failure to serve motion to confirm a plan, failure to make any plan payments, and failure to provide tax records. *Id.* Civil Minutes, Dckt. 44 and Order, Dckt. 46.

II. Chapter 13 Case No. 15-29758, filed on December 22, 2015, by “Jon Michayl Hammer,” which was dismissed by order entered on January 25, 2016.

A. The Bankruptcy Petition provides the following information about debtor “Jon Michayl Hammer, Sr.:

1. All other names
 - a. John Hammer McCall
 - b. John H. McCall-Hagy
2. Last four digits of Social Security No. 3927 (Same Social Security Number as listed for Mike Hammer in the current bankruptcy case).
3. Last four digits of EIN 4670 (Same EIN as Mike Hammer, Tinley Britt, and Richard O’Brien)

4. Residence: 10824 Olson Drive, Rancho Cordova, California
5. Business Names
 - a. IDS2.com dba Maholoo, LLC
 - b. Global Technologies aka IDS2.com, Inc.

Case No. 15-29758, Dckt. 1.²

B. Amended Bankruptcy Petition; *Id.*, Dckt. 14.

1. All other names used
 - a. Add: Richard C. O'Brien

C. Schedule and Statement of Financial Affairs; *Id.*, Dckt. 21.

Schedule A, Real Property, <i>Id.</i> at 3	None
Schedule B, Personal Property, <i>Id.</i> at 4-12	Vase.....\$100 Cash.....\$300 All other Personal Property.....None
Schedule C, Exempt Property, <i>Id.</i> at 13-14.	None
Schedule D, Secured Claims, <i>Id.</i> at 15	“TBD”
Schedule E, Priority Unsecured Claims, <i>Id.</i> at 18	None
Schedule F, General Unsecured Claims, <i>Id.</i> at 9	None

² The California Secretary of State does not list a corporation named “IDS2.com” registered to do business in California. <http://kepler.sos.ca.gov> However, a company named “Global Technologies Corp.” is listed as having its powers suspended by the California Franchise Tax Board. *Id.* The Secretary of State lists a Global Technologies, Inc. as an active corporation, which is located in Dan Diego, California; and a Global Technologies, Inc. in Rancho Palos Verde, California, with its powers suspended; and two Global Technologies, Inc., which have had their corporate powers forfeited. None of these appear to match up to the addresses used by the Debtor.

Schedule I, Income, <i>Id.</i> at 26-27	Self Employed Occupation....."Mkgt" Employer Address "On file." (Court cannot identify where it is "on file.") Monthly Gross Wages, Salary, Commissions.....\$1,900.00 Withholding, Tax and Social Security.....(\$ 100.00)
Schedule J, Monthly Expenses; <i>Id.</i> at 28-30	Total.....(\$1,700.00) Rent/Mortgage.....(\$800) Property Taxes.....None Property Insurance.....None Home Maintenance.....None Electricity/Gas.....(\$100) Water/Sewer/Garbage.....None Telephone/Cell/Cable.....(\$100) Food/Housekeeping.....(\$200) Clothing/Laundry.....None Personal Care Products.....None Medical/Dental Expense.....None Transportation.....(\$200) (No vehicles on Sch. B) Vehicle Ins.....None Health Ins.....None Taxes.....None
Statement of Financial Affairs, Part 2, Income From Employment or Business; <i>Id.</i> at 33.	2015 YTD.....\$ 0.00 2014.....\$1,900.00 2013.....\$ 0.00
Statement of Financial Affairs, Part 2, Other Income; <i>Id.</i>	None
Statement of Financial Affairs, Part 3, <i>Id.</i> at 34.	Debtor does not have primarily consumer debts.
Statement of Financial Affairs, Part 11, Businesses; <i>Id.</i> at 42	Debtor has no businesses in the four year prior to the commencement of the bankruptcy case.

As with the Michael Hammer Chapter 13 case, the Jon Michayl Hammer Chapter 13 Plan (*Id.*, Dckt. 22) provides for:

1. Monthly Plan Payment.....\$25.00
2. Treatment of Class 1.....Refer to Schedule D/F
3. Class 2 thorough Class 6 Claims.....”N/A”
4. Class 7 General Unsecured Claims.....0% Dividend on \$0.00 General Unsecured Claims.

The Jon Michayl Hammer Chapter 13 case was dismissed for failure to prosecute case and failing to file and serve motion to confirm plan). *Id.*; Order, Dckt. 26. Additionally, the case was also dismissed for failure to Attend First Meeting of Creditors, failure to serve motion to confirm Chapter 13 Plan, failure to make any plan payments, and failure to provide tax records. *Id.*; Civil Minutes, Dckt. 44, and Order, Dckt. 46.

III. Chapter 13 Bankruptcy Case, No. 16-23251, filed on May 19, 2016, by “Richard O’Brien” and dismissed on June 17, 2016.

A. The Bankruptcy Petition provides the following information about debtor “Richard O’Brien:”

1. All other names
 - a. Douglas Akoto
 - b. Thomas Lee
2. Last four digits of Social Security No. 8457 (Similar to Social Security Number as listed for Mike Hammer in the current bankruptcy case).
3. Last four digits of EIN 4670 (Same EIN as Mike Hammer, Tinley Britt, and “Jon Michayl Hammer”).
4. Residence: 8251 Bruceville Rd, Sacramento, California.
5. Mailing Address: 43625 SE 137th Court, North Bend, Washington.
6. Business names:
 - a. IDS2.Com, Inc.
 - b. IDS2.Com

Case No. 15-29758, Dckt. 1.

No Schedules or Statement of Financial Affairs were filed in the Richard O’Brien Chapter 13 case.

The Richard O'Brien Chapter 13 case was dismissed on June 17, 2016, for failure to file documents. *Id.*; Order, Dckt. 21.

A Motion to Vacate Dismissal was filed by Richard O'Brien on July 11, 2016. *Id.*; Motion, Dckt. 28. The sum total of the allegations in the Motion are:

1. Richard O'Brien's address is stated as 43625 S.E. 137th Court, North Bend, Washington, on the Motion.
2. The Motion states the grounds with particularity as "adverse hardship," and "excusable neglect."

No declaration is provided in support of the Motion and no other evidence filed. The Chapter 13 Trustee opposes the motion, which opposition includes the failure to serve all parties in interest and the Richard O'Brien failing to disclose the other bankruptcy cases which are linked to him.

IV. Chapter 13 Case No. 15-21623, filed on March 16, 2016, by "Tinley Britt," which was converted to one under Chapter 7 (voluntary conversion), and was dismissed by order entered on April 14, 2016.

A. The bankruptcy Petition provides the following information about debtor "Tinley Britt:"

1. All other names
 - a. Douglas Akoto
 - b. John McCall
2. Last four digits of Social Security No. 3927 (Same Social Security Number as listed for Mike Hammer in the current case and Jon Michayl Hammer).
3. Last four digits of EIN 4670 (Same EIN as Mike Hammer, Jon Michayl Hammer, and Richard O'Brien)
4. Residence: 1111 Ruley Street, Folsom, California
5. Business Names
 - a. IDS2.com / IDS-2-Net
 - b. Global Technologies
6. Mailing Address
 - a. 16285 Avenal Place, Fontana, California

Case No. 16-21623, Dckt. 1.

- B. No Schedules or Statement of Financial Affairs Filed.

The Tinley Britt Chapter 13 case was dismissed on April 14, 2016, for failure to file Schedules and Statement of Financial Affairs. *Id.*; Order, Dckt. 23.

FAILURE TO PAY FILING FEES

For the current Chapter 13 case and the related cases linked by Social Security and Employer Identification Number, the following filing fees have been paid:

- A. Current Chapter 13 Case No. 16-23712 filed on June 8, 2016,
by "Mike Hammer" filing fees paid by the debtor total.....\$0.00.
- B. Chapter 13 Case No. 15-27345 filed on September 18, 2015,
by "Michael Hammer" filing fees paid by the debtor total.....\$0.00.
- C. Chapter 13 Case No. 15-29758 filed on December 22, 2015,
by "Jon Michayl Hammer" filing fees paid by the debtor total.....\$0.00.
- D. Chapter 13 Case No. 16-23251 filed on May 19, 2016 by
"Richard O'Brien," the filing fees paid by the debtor total.....\$0.00.
- E. Chapter 13 Case No. 15-21623, filed on March 16, 2016, by
"Tinley Britt," the filing fees paid by debtor total.....\$0.00.

PROSECUTION OF CURRENT BANKRUPTCY CASE

In the current Chapter 13 Case, there is pending an Order to Show Cause why the case should not be dismissed for Debtor failing to make any filing fee installment payments. OSC, Dckt. 25. The "Schedules" filed by Debtor fail to clearly disclose assets and liabilities. Taken on their face, the Schedules state under penalty of perjury that Debtor has no real property, no personal property, that his secured debt is "not applicable," that he has no priority claims, and that his general unsecured claims are "to be determined." Further, that his income is "to be determined" and his expenses are "to be determined." On the Statement of Financial Affairs, he fails to disclose his income to date or income for the two years preceding the commencement of this case, again, for each of those stating that they are "to be determined." The Schedules and Statement of Financial Affairs are devoid of any information.

On the Mailing Matrix on which Debtor is to state the addresses for all his creditors, five persons are listed: (1) Hawaii Electric Light Company; (2) the Department of Water Supply in Hilo, Hawaii; (3) Burretec Waste & Recycling Services, Buena Park, California; (4) State of Hawaii Public Utilities Commission; and (5) Frontier Communications in Tampa, Florida. Dckt. 4.

On the Mailing Matrix, the Debtor identifies his aka as Michael Hammer, listing an address of 82-5988B Napoopoo Rd, Captain Cook, Hawaii. On the Petition, Debtor also lists his "DBA/AKA" as "Global Technologies, LP." Dckt. 1.

On his bankruptcy Petition, Debtor states that he has not filed any other bankruptcy cases in the eight years prior to the commencement of this current case. He responds to this question on the bankruptcy Petition stating “N/A” (not applicable). This question is applicable to all debtors – including Mike Hammer.

Notwithstanding stating in the bankruptcy Petition that he has not filed any prior cases and that he also goes by the name Michael Hammer, there is the Michael Hammer case filed in this District – Case No. 15-27345. On the Bankruptcy Petition in Case No. 15-27345, “Michael Hammer” states that his principal assets are located at 82-5988 Napoopoo Rd, Apt. B, Captain Cook, Hawaii – exactly the same address given by Mike Hammer in this case. In the “Michael Hammer” bankruptcy case, the Mailing Matrix lists the following persons: (1) Hawaii Electric Light Company; (2) Department of Water Supply, Hilo, Hawaii; (3) Hawaii Gas; Hawaiian Telecom; and (4) Oceanic Time Warner Cable. Case No. 15-27345; Dckt. 8.

Tinley Britt, Case No. 16-21623, also lists Global Technologies (using the same EIN as Debtor) as the business name in which Tinley Britt does business. Jon Michayl Hammer also lists the same EIN saying that he does business as Global Technologies. Case No. 15-29758, Dckt. 1. Richard O’Brien, aka Douglas Akoto, aka Thomas Lee, also states that he uses the same EIN to do business as IDS2.Com, Inc.

There is no effective prosecution (nor any attempt at any real prosecution) of this Chapter 13 case by Debtor.

PREFILING REVIEW AUTHORITY OF COURT

The bankruptcy courts are established by an act of Congress and the All Writs Act, 28 U.S.C. § 1651(a), and 11 U.S.C. §105 provides the bankruptcy courts with the inherent power to enter prefiling orders against vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al.*, 500 F.3d 1047 (9th Cir. 2007); *Gooding v. Reid, Murdock & Co.*, 177 F.3d 684, (7th Cir. 1999), *Weissman v. Quail Lodge Inc.*, 179 F.3d 1194, 1197 (9th Cir. 1999), and *In re Bialac* 15 B.R. 901, B.A.P. 9th Cir. 1981), *affd* 694 F.2d 625 (9th Cir. 1982). A court must be able to regulate and provide for the proper filing and prosecuting of proceedings before it. 11 U.S.C. §105(a) expressly grants the court the power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. Further, the court is authorized to *sua sponte* take any action or make any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. This power exists, and it does not matter whether it is being exercised pursuant to 11 U.S.C. §105 or the inherent power of the court. *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 2007); and *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996).

The Ninth Circuit Court of Appeals re-stated the grounds and methodology for prefiling review requirements as an appropriate method for the federal courts in effectively managing serial filers or vexatious litigants. *Molski v. Evergreen Dynasty Corp, et al.*, 500 F.3d 1047 (9th Cir. 2007), *en banc* hearing denied, 521 F.3d 1215 (9th Cir. 2008); and *In re Fillbach*, 223 F.3d 1089 (9th Cir. 2000). While maintaining the free and open access to the courts, it is also necessary to have that access be properly utilized and not abused. The abusive filing of bankruptcy petitions, motions, and adversary proceedings for purposes other than as allowed by law diminishes the quality of and respect for the judicial system and laws of this country.

As addressed by the Ninth Circuit Court of Appeals in *Molski*, the ordering of a prefiling review requirement is not to be entered with undue haste because such orders can tread on a litigant’s due process right of access to the courts. As discussed in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429, 102 S. Ct. 1148,

71 L. Ed. 2d 265 (1982), the right to seek redress from the court is a protected right of civil litigants. The issuing of a prefiling order is to be made only after a cautious review of the pertinent circumstances.

However, the Ninth Circuit Court of Appeals clearly draws the line that a person's right to present claims and assert rights before the federal courts is not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

“Nevertheless, “[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants.” *De Long*, 912 F.2d at 1148; see *O’Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).”

Molski v. Evergreen Dynasty Corp, et al., supra, pg. 1057. In the Ninth Circuit, the trial courts apply a four factor analysis in determining if and what type of prefiling or other order should properly be issued based on the conduct of the party at issue.

- “1. First, the litigant must be given notice and a chance to be heard before the order is entered.
2. Second, the district court must compile “an adequate record for review.”
3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff’s litigation.
4. Finally, the vexatious litigant order “must be narrowly tailored to closely fit the specific vice encountered.”

Id.

The Debtor’s filing of the current bankruptcy case and the prior case, neither of which have been prosecuted in any good faith, meaningful way, demonstrates an inability or unwillingness to prosecute the cases. Additionally, it appears that using various aliases, Debtor has been filing other cases in this District, or is working with some scheme or service to churn Social Security and Employer Identification Numbers to improperly file bankruptcy cases. Just in the current case and the prior case filed by Michael Hammer, no meaningful required financial or personal information is provided by Debtor. Rather, the right to file bankruptcy and access the tremendous relief available thereunder appears to be viewed as merely an opportunity for abuse, fraud, and misrepresentation.

The court is cognizant of the significant impact the filing of a bankruptcy case has not only on the Debtor, but creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in a subparagraph of a subsection of the Bankruptcy Code, the automatic stay does not go into effect, the presentation of a filed bankruptcy petition and the significant sanctions imposed on someone violating the stay can work to improperly prevent creditors from legitimately enforcing their rights. In these cases the Debtor has filed a series of non-productive Chapter 13 cases, which do not appear to have been filed for any *bona fide* purpose. The Debtor has been afforded multiple opportunities to advance a Chapter 13 plan to cure defaults on the obligation owing to the creditor and restructure the debt through the Chapter 13 plan. While obtaining the benefit of the automatic stay, whether actually or improperly represented to exist, the Debtor has been unable or refused to properly prosecute a Chapter 13 Plan.

The court has weighed the options, ranging from just dismissing the current case, as it has done for the various other cases, to imposing an outright bar on the Debtor (using any aliases) from filing a bankruptcy case. Clearly, some limits need to be placed on the Debtor to prevent the abuse and attempted abuse of the bankruptcy court, bankruptcy laws, state court judgments, and third-parties.

Even if Debtor is “innocently” being led into a bankruptcy scheme, he is demonstrating that he has not heretofore been able to prosecute a bankruptcy case, or even to accurately complete the bankruptcy schedules and statement of financial affairs. This has led to Debtor squandering his valuable bankruptcy rights, as well as potentially committing a fraud on the court and creditors. In addition, the making of false statements under penalty of perjury could subject Debtor to both civil and criminal sanctions, penalties, and prosecutions.

At this point, the court will not ban the Debtor from ever filing bankruptcy, but will impose the much more moderate requirement that the Debtor first obtain the prefiling authorization from the chief judge in the bankruptcy district before commencing another bankruptcy case during the eight-year period following the dismissal of this case. The court selects this eight-year period after considering the eight-year period which Congress has determined to be appropriate for obtaining discharges in Chapter 7 cases and the four-year period in Chapter 13 cases.

A prefiling review requirement is of little impact to a debtor seeking legitimate relief from the bankruptcy court. In this case, it will require the Debtor (whether represented by counsel or continuing to act in *pro se*) to have the initial bankruptcy pleadings completed and, on their face, appear to be completed consistent with the requirements of the Bankruptcy Code and Chapter under which the Debtor seeks to file bankruptcy. It imposes no significant cost or delay, in that the petition, schedules, and other basic pleadings need to be prepared at the time of filing regardless of whether a prefiling review exists. The ability to file rests solely with the Debtor, requiring the Debtor to do and comply with only what the Bankruptcy Code requires.

It also has the effect of this Debtor being prepared to successfully prosecute a Chapter 13 case, rather than continue to flounder and squander rights under the Bankruptcy Code. By the prior conduct, the Debtor has lost the ability to receive the automatic stay. To the extent that he has or had the ability to cure any defaults and restructure any debts allowed in the Chapter 13 case, those appear to have been squandered as well. To the extent that the Debtor is attempting to modify a claim secured by a lien only on his home, such modification is barred by the Bankruptcy Code without the consent of the creditor. 11 U.S.C. § 1322(b)(2).

The court remains concerned by Debtor’s actions throughout his bankruptcy cases.

The court shall issue a minute 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.

IT IS FURTHER ORDERED that Mike Hammer; aka Michael Hammer, Jon Michayl Hammer, Tinley Britt, John Hammer McCall, John H. McCall-Hagy, Richard

O'Brien, or Global Technologies, LP; or any other alias or other name; (collectively the "Debtor") is enjoined from filing any bankruptcy cases, in any Bankruptcy Court in any District, for the period of eight years, commencing September 7, 2016, and continuing through and including September 6, 2024, unless the prior authorization is obtained from the Chief Bankruptcy Judge in the District in which he desires to file a bankruptcy case.

In seeking leave to file a bankruptcy case in this or any other District, the motion for leave to file shall be supported by drafts of the petition, schedules, statement of financial affairs, and all other documents required for the complete filing of a bankruptcy case. Additionally, a copy of this order and the Civil Minutes for the September 7, 2016 hearing on the order to show cause (which Minutes constitute the court's findings of fact and conclusions of law) shall also be included as exhibits provided to the Chief Bankruptcy Judge from whom leave to file a bankruptcy case is requested.

IT IS FURTHER ORDERED that the Clerk of the Bankruptcy Court, and deputy clerks operating under the direction and control of the Clerk of the Court in any District, are authorized to reject any petition attempted to be filed by Mike Hammer; aka Michael Hammer, Jon Michayl Hammer, Tinley Britt, John Hammer McCall, John H. McCall-Hagy, Richard O'Brien, or Global Technologies, LP; or any other alias or other name, by the Debtor in this case, during the eight (8) year period of the injunction issued in this order, if there is not the prior authorization from the Chief Bankruptcy Judge for the District.

12. [16-23712](#)-E-13 **MIKE HAMMER**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-12-16 [[31](#)]

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") and Chapter 13 Trustee on August 12, 2016. The court computes that 26 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 August 8, 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 that is the subsection of the Order to Show Cause has not been cured. The following filing fee is delinquent and unpaid by Debtor: \$77.00 due on August 8, 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 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 September 7, 2016 hearing is required.

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 56 days’ notice has been provided.

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

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

AUGUST 10, 2016 HEARING

At the hearing, the court noted that the docket reflects that the default in payment that is the subjection of the Order to Show Cause had not been cured. The following filing fees were delinquent and unpaid by Debtor: \$79.00 due on July 8, 2016. The court continued the matter to 10:00 a.m. on September 7, 2016, to be heard in conjunction with the court’s Order to Show Cause why a Prefiling Review Order should not be entered for Debtor.

DEBTOR’S NOTICE OF COMPLIANCE

On August 9, 2016, Debtor filed a Notice of Compliance in which he asserted to have paid the delinquent fee of \$79.00 due on July 8, 2016. Dckt. 30.

DISCUSSION

The court’s docket reflects that the default has been cured. Debtor has paid the \$79.00 fee due on July 8, 2016. Dckt. 30.

The court shall issue a minute 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 September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,160.00 delinquent in plan payments, which represents multiple months of the \$580.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

15. [16-23615](#)-E-13 TATYANA MOLITVENIK
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-5-16 [\[44\]](#)

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") and Chapter 13 Trustee on August 5, 2016. The court computes that 33 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 August 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 fee is delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$418.00 delinquent in plan payments, which represents multiple months of the \$209.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

17. [13-22917](#)-E-13 **VICTORIA THOMPSON** **MOTION TO DISMISS CASE**
 DPC-1 **Rabin Pournazarian** **8-9-16 [48]**

Final Ruling: No appearance at the September 7, 2016 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 27, 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 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 \$2000.00 delinquent in plan payments, which represents multiple months of the \$500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 62. The Opposition states that there are at least two claims on file (Portfolio Recovery Associates LLC and First Tech Federal Credit Union) that are subject to objection. Debtor asserts that these claims are solely the obligation of Debtor's former spouse. Debtor states that the disallowance of these claims beyond any amount paid by the Trustee up to this point will bring the Plan back within the 60-month limit based on the percentage to be paid to the remainder of creditor claims that are not subject to objection.

The Debtor's Opposition, however, offers legal conclusions without any factual or evidentiary support. The Debtor states that the claims are solely the obligation of Debtor's former spouse, yet the Debtor has failed to file objections to these claims. The court cannot disallow these claims through an Opposition to the Trustee's Motion to Dismiss. Debtor must file an Objection to Claim pursuant to Federal Rule of

Bankruptcy Procedure 3007. Thus, the prima facie Proofs of Claim filed by Portfolio Recovery Associates, LLC and First Tech Federal Credit Union are controlling still.

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. [15-20821](#)-E-13 CHARLOTTE REYNOLDS MOTION TO DISMISS CASE
DPC-4 Mikalah Liviakis 8-9-16 [\[42\]](#)

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,013.83 delinquent in plan payments, which represents multiple months of the \$899.99 plan payment. Failure to make plan

The Trustee seeks dismissal of the case on the basis that the Debtor is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 79. The Opposition states that on or about August 9, 2016, the Trustee posted a money order payment in the amount of \$200.00. Debtor has provided the declaration of Garrett Lenox to introduce evidence of the August 9, 2016 money order payment to the Trustee in the amount of \$200.00. Dckt. 81. Unfortunately, this amount is not sufficient to cure the total delinquency.

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

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

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

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

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

21. [14-29223](#)-E-13 **WILLIAM/TERRY SHOUSE** **MOTION TO DISMISS CASE**
 DPC-1 **Scott Hughes** **8-9-16 [\[77\]](#)**

Final Ruling: No appearance at the September 7, 2016 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,100.00 delinquent in plan payments, which represents multiple months of the \$2,080.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 23, 2016. Dckt. 69. The Opposition states that as of August 23, 2016, Debtor has paid the delinquent amount totaling \$4,100.00 and is current under the Plan. Debtor asserts that Debtor's husband told Debtor that he paid \$1,100.00 in person at the Trustee's Office on August 23 and that the Trustee received \$3,000.00 on August 11, 2016.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a Response on August 30, 2016. Dckt. 71. Trustee asserts that Debtor has made multiple payments in August that total \$4,100.00. Trustee states, however, that Debtor is not current because the current monthly plan payment of \$2,080.00 is due. Trustee states that the August plan payment will become due before the September 7, 2016 hearing, that Debtor has not paid it, and that

Debtor, therefore, is delinquent in the amount of \$2,080.00.

DISCUSSION

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

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

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

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

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

23. [16-24223](#)-E-13 **JANACE LIPPI**
Michael Benavides

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-4-16 [[20](#)]

Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Janace Lippi (“Debtor”), Debtor’s Attorney, and the Trustee as stated on the Certificate of Service on August 6, 2016. The court computes that 32 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$1.00 due on August 1, 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. Dckt. 21.

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

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

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

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

24. [16-24326-E-13](#) JESUS/MARIA RIVERA
Thomas Gillis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-5-16 [[14](#)]

Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jesus Rivera and Maria Rivera (“Debtors”), Debtors’ Attorney, and the Trustee as stated on the Certificate of Service on August 7 2016. The court computes that 31 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 August 1, 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 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 deny without prejudice the Motion to Dismiss.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,280.00 delinquent in plan payments, which represents multiple months of the \$570.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 22, 2016. Dckt. 147. The Opposition states that Debtor will be current on or before the hearing on this matter. Unfortunately, a promise to be current is not evidence of such.

Modified Plan and Motion to Confirm Filed

The court notes that on September 2, 2016, Debtor filed a modified plan and motion to confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckt. 149, 152. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Motion is denied without prejudice, the Debtor appearing to actively prosecute the case to address the default.

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

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

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

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

26.	<u>16-22732-E-13</u>	DANNY RUE Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-1-16 <u>[37]</u>
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Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Danny Rue (“Debtor”) and Trustee as stated on the Certificate of Service on August 3, 2016. 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 (\$77.00 due on July 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. Dckt. 40.

The court shall issue a minute 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.

27. [12-23733](#)-E-13 LINDA MIDGETT MOTION TO DISMISS CASE
DPC-7 Alan Honaker 8-9-16 [84]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 7, 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.

28. [14-24035](#)-E-7 KAREN HOWARD MOTION TO DISMISS CASE
DPC-2 Mark Shmorgon 8-9-16 [38]

Final Ruling: No appearance at the September 7, 2016 hearing is required.

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

Proper Notice Provided. The Proof of Service filed on August 9, 2016, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee. 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 Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented, and the court shall issue its ruling from the pleadings filed by the parties.

The Motion to Dismiss is denied as moot.

The Trustee seeks to Dismiss Debtor's Chapter 13 case. However, on August 22, 2016, the Debtor filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute, and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on August 22, 2016. *McFadden*, 37 B.R. at 521.

The court shall issue a minute 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 to Dismiss is denied as moot.

29. [15-29137](#)-E-13 ANGELA MALONE MOTION TO DISMISS CASE
DPC-1 Julius Engel 8-9-16 [33]

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,452.00 delinquent in plan payments, which represents multiple months of the \$1,876.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee

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

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

30. [15-21339](#)-E-13 **PAUL/MAUREEN ROSENBERRY** **MOTION TO DISMISS CASE**
DPC-2 **Scott Hughes** **8-9-16 [36]**
JOINT DEBTOR DISMISSED:
05/05/2015

Final Ruling: No appearance at the September 7, 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, Debtors' Attorney, and Office of the United States Trustee on August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtors are \$3,481.05 delinquent in plan payments, which represents multiple months of the \$1,758.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee

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

Final Ruling: No appearance at the September 7, 2016 Hearing is required.

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 68, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: 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, Debtors' Attorney, and Office of the United States Trustee on August 22, 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. At the hearing -----
-----.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,520.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file an Amended Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016 (Dckt. 32). A review of the docket shows that Debtor has not yet filed an amended 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 that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Moreover, Debtor admitted at the Meeting of Creditors that the federal income tax return for the 2015 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).

The Debtor has not provided the Trustee with proof of Social Security Number. *See* 11 U.S.C. § 521(h)(2). This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

33.	<u>16-22942-E-13</u>	TRACI HAMILTON Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-8-16 [57]
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Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Traci Hamilton (“Debtor”), Debtor’s Attorney, and the Trustee as stated on the Certificate of Service on August 10, 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 (\$77.00 due on August 3, 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.

34. [14-26551](#)-E-13 **MARIA QUINTANA CAMACHO** **MOTION TO DISMISS CASE**
DPC-3 **Peter Macaluso** **8-9-16 [29]**
WITHDRAWN BY M.P.

Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on August 24, 2016, Dckt. 35, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

35. [16-23056](#)-E-13 **ANDREW KNIERIEM**
W. Steven Shumway

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-15-16 [39]

Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Andrew Knieriem (“Debtor”) and the Trustee as stated on the Certificate of Service on August 17, 2016. The court computes that 21 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$77.00 due on August 9, 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.

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, Debtors' Attorney, and Office of the United States Trustee on August 22, 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. At the hearing -----
-----.

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

The Trustee's Motion argues that the Debtor did not file an Amended Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016 (Dckt. 27). A review of the docket shows that Debtor has not yet filed an amended 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 that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

37. [14-27360](#)-E-13 **EDITH INGRAM** **MOTION TO DISMISS CASE**
DPC-4 **Chinonye Ugorji** **8-9-16 [71]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 \$1,100.00 delinquent in plan payments, which represents multiple months of the \$550.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 26, 2016. Dckt. 75. The Opposition states that Debtor has made a payment of \$1,100.00 on August 19, 2016, curing the delinquency.

Another payment became due on August 25, 2016. Debtor asserts that this payment will be made on September 3, 2016, when Debtor receives her social security check. Debtor claims to have fallen behind in her Plan as a result of having suffered a fall that kept her incapacitated for the prior two months. Unfortunately, the Debtor has not provided evidence (no declaration filed) of such a cure, but only the unsupported argument of her counsel in the opposition..

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. [16-22761-E-13](#) **CHARLTON CURRY** **MOTION TO DISMISS CASE**
DPC-1 Pro Se 8-5-16 [\[46\]](#)

Final Ruling: No appearance at the September 7, 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 August 5, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 argues that the Debtor has not commenced making plan payments and is \$4,950.00 delinquent in plan payments, which represents multiple months of the \$1,650.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

The Debtor has failed to provide the Trustee with the answers to certain questions about the Debtor's business, including: recent profit and loss; a list of employees; and other questions set out in a Business Case Questionnaire mailed to the Debtor. The Debtor has also failed to provide other documentation such as copies of bank statements, business tax returns, licenses, and insurance policies. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court notes that this is not the Debtor's first recent case filed in this court. The three prior cases (one Chapter 7 cases and two Chapter 13 cases) were filed by the Debtor and dismissed: 15-28227, 15-25602, and 14-23519.

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. [16-23370](#)-E-13 **BARRY MCGWIRE**
 Pro Se
DEBTOR DISMISSED: 08/15/2016

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-28-16 [[27](#)]

Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Barry McGwire (“Debtor”), Trustee, and other such other parties in interest as stated on the Certificate of Service on July 30, 2016. The court computes that 39 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 25, 2016).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on August 15, 2016 (Dckt. 33), 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.

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, Debtors' Attorney, and Office of the United States Trustee on August 9, 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 \$2,864.00 delinquent in plan payments, which represents multiple months of the \$1,432.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 23, 2016. Dckt. 71. The Opposition states that Debtors will be current on or before the hearing on this matter. Unfortunately, counsel's argument of a future cure is not evidence of such.

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

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

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

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

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

41.	<u>14-32371</u> -E-13 DPC-1	JAMES/MONA STILES Scott Hughes	MOTION TO DISMISS CASE 8-9-16 <u>[24]</u>
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Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on September 1, 2016, Dckt. 35, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 35, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. 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") and the Trustee on August 12, 2016. The court computes that 26 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 August 5, 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 fee is delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

43. [16-24572-E-13](#) GERARD KEARNEY
Dale Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-16 [\[19\]](#)

Final Ruling: No appearance at the September 7, 2016 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Gerard Kearney (“Debtor”), Debtor’s Attorney, and the Trustee on August 20, 2016. The court computes that 18 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 August 15, 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 \$4,490.95 delinquent in plan payments, which represents multiple months of the \$1,347.81 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 110. The Opposition states that Debtor will be current on or before the hearing on this matter. Unfortunately, a promise to be current is not evidence of such.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee

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

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

45. [15-20077-E-13](#) **CARL/CAROLYN FORE** **MOTION TO DISMISS CASE**
 DPC-2 **Timothy Walsh** **8-9-16 [90]**

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, Debtors' Attorney, and Office of the United States Trustee on August 9, 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 \$4,050.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 22, 2016. The Opposition states that Debtors believe they will be caught up on payments on or before the hearing on this matter. Unfortunately, the Debtors have not offered evidence of such a cure, and their belief that they will be current is not evidence of such.

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

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

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

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

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

46.	<u>16-22677</u> -E-13	ANDRES SUAREZ Richard Jare	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-1-16 [55]
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Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Andres Suarez (“Debtor”), Debtor’s Attorney, and the Trustee as stated on the Certificate of Service on August 3, 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 (\$77.00 due on July 26, 2016).

The court’s decision is to sustain the Order to Show Cause, and the case is 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 fee is delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(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, 140 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 April 20, 2016. Dckt. 30. The Trustee seeks dismissal based on Ruth Austin's ("Debtor") delinquency in plan payments. This hearing has been continued, with the Trustee's Supplement to the Motion stating that as of August 23, 2016, the Debtor was delinquent \$1,000.00 in plan payments, with the next payment of \$1,000.00 due on August 25, 2016. Dckt. 72.

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 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 sale, it lists JDK & Associates receiving a real estate commission of \$8,811.89 for the \$449,000.00 sale 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 newly identified asset into account.

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.

AUGUST 10, 2016 HEARING

At the hearing, the Chapter 13 Trustee concurred in Debtor's request that the hearing be continued to allow Debtor a final opportunity to cure the arrearage and to address the changing financial and personal events in her life as they relate to her ability to perform the Chapter 13 Plan in this case. The court continued the matter to September 7, 2016, at 10:00 a.m. Dckt. 69.

TRUSTEE'S STATUS UPDATE

The Chapter 13 Trustee filed a status update on August 23, 2016. Dckt. 72. Trustee states that Debtor has paid \$7,000.00—which is 87.5% of the plan payments due so far—with the most recent payment occurring on August 17, 2016. Trustee states that Debtor is in month 9 of a 48-month plan. Trustee asserts that \$8,000.00 is due under Debtor's confirmed plan, which means that Debtor is delinquent \$1,000.00 in plan payments with the next payment due on August 25, 2016.

Trustee states that Debtor has submitted \$5,000.00 as a relocation assistance fee to the Trustee in an effort to resolve Debtor's delinquency. Additionally, Trustee states that escrow closed on Debtor's Property on August 15, 2016, and that on August 18, 2016, Debtor gave the final HUD-1/closing statement and a \$5,000.00 check to the Trustee.

Finally, Trustee notes that Debtor has moved out of state (noted by a change of address (Dckt. 61)), and Trustee is unsure whether Debtor intends to continue with the instant bankruptcy case. If the Debtor intends to continue with the case, Trustee believes that a modified plan is necessary because Debtor remains delinquent in plan payments.

DISCUSSION

Debtor is \$1,000.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided evidence that the delinquency has been cured, and the Trustee notes that Debtor is delinquent still. Debtor has not filed a modified plan that would cure the delinquency. The court does not see any ground upon which the instant Motion should be discharged. Accordingly, the Motion is granted, and the case is dismissed.

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

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

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

Final Ruling: No appearance at the September 7, 2016 Hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on August 31, 2016, Dckt. 63, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 63, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Final Ruling: No appearance at the September 7, 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 August 9, 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 continue the Motion to Dismiss to October 12, 2016, at 10:00 a.m.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,800.00 delinquent in plan payments, which represents multiple months of the \$2,400.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 46. The Opposition requests that Debtor be allowed to become current under the terms of her plan by October 12, 2016, or in the alternative, be allowed to file a modified plan. The Debtor states that a delay in processing invoices by Debtor's employer caused there to be insufficient funds to pay Debtor. The Debtor believes that the issues that held up the payment on the invoices have been resolved, and she will receive the back amounts owed to her, and she will be able to become current under the terms of her confirmed Plan by October 12, 2016.

In the interest of maintaining Debtor's confirmed plan, the motion is continued to October 12, 2016, at 10:00 a.m. to determine whether Debtor has become current with plan payments.

The court shall issue a minute 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 October 12, 2016, at 10:00 a.m.

50. [12-27182-E-13](#) **LISA BENNETT** **MOTION TO DISMISS CASE**
DPC-1 **Marc Caraska** **8-9-16 [92]**

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 9, 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 \$1,716.21 delinquent in plan payments, which represents multiple months of the \$738.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

The Debtor filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 96. The Opposition states that Debtor plans to file a modified plan before the hearing on the Trustee's Motion. Unfortunately, Debtor has failed to provide any evidence of such cure 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.

51. 16-21885-E-13 **SUSAN REICHARD** **MOTION TO DISMISS CASE**
 DPC-2 **Julius Engel** **8-11-16 [52]**

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 August 11, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Trustee seeks dismissal of the case on the first basis that Debtor is \$85.00 delinquent in plan

payments. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues additionally that 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 that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

52.	<u>16-22088-E-13</u>	JAMIE CELAYA Thomas Amberg	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-4-16 [30]
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Final Ruling: No appearance at the September 7, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jamie Celaya ("Debtor"), Debtor's Attorney, and the Trustee as stated on the Certificate of Service on August 6, 2016. The court computes that 32 days' notice has been provided.

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

53. [14-31993-E-13](#) **DAVID/ROWENA ABBOTT** **MOTION TO DISMISS CASE**
DPC-3 **Matthew DeCaminada** **8-9-16 [74]**

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, Debtors' Attorney, and Office of the United States Trustee on August 9, 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 Debtors 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 Debtors are \$1,068.00 delinquent in plan payments, which represents multiple months of the \$356.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTORS' OPPOSITION

The Debtors filed an Opposition to the Trustee's Motion on August 24, 2016. Dckt. 78. The Opposition states that Debtors and counsel are currently drafting a Second Modified Chapter 13 Plan and shall amend their budget according to their current income and expenses. Unfortunately, the Debtors have failed to provide any evidence of such cures 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.

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,990.00 delinquent in plan payments, which represents multiple months of the \$995.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the September 7, 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 August 9, 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,869.00 delinquent in plan payments, which represents multiple months of the \$3,435.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

Final Ruling: No appearance at the September 7, 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, 105 days' notice was provided. 28 days' notice is required.

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

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

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, Debtor and Trustee filed a joint stipulation to continue the instant hearing. The stipulation states that due to an employer's payroll error, 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.

AUGUST 10, 2016 HEARING

At the hearing, the court continued the matter to September 7, 2016, at 10:00 a.m. because of the stipulation between the parties and for good cause. Dckt. 149.

DISCUSSION

A review of the docket shows that Debtor has not filed a modified plan or a motion to confirm modified plan. No further stipulations or responses have been filed by the parties. Therefore, the court grants the Trustee's Motion to Dismiss.

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

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

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

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

Final Ruling: No appearance at the September 7, 2016 Hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on September 1, 2016, Dckt. 132, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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