

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 12, 2016, at 10:00 a.m.

1. [16-22100-E-13](#) **DAVID/DEANNA TIBBETT** **MOTION TO DISMISS CASE**
DPC-2 **Matthew DeCaminada** **8-18-16 [58]**

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 4, 2016, Dckt. 79; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtors; the Ex Parte motion is granted, **the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.**

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 79, 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 October 12, 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 31, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$650.00 delinquent in plan payments, which represents one month of the \$650.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Lastly, the Trustee filed a Motion to Dismiss based on the Debtor's failure to provide Trustee with Business Documents, including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Profit and loss statements,
- D. Bank account statements,
- E. Proof of license or written statement that no such documentation exists, and
- F. Proof of insurance or written statement that no such documentation exists.

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

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

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

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

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

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

3. 15-27002-E-13 JANE GALE
DPC-2 Bruce Dwiggin

MOTION TO DISMISS CASE
9-13-16 [29]

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 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 Motion to Dismiss is granted, and the case is dismissed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,370.28 delinquent in plan payments (with another \$1,127.48 coming due before the hearing), which represents multiple months

of the \$1,127.48 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response to Trustee's Motion to Dismiss Case on September 27, 2016. Dckt. 33. Debtor states that she is delinquent in plan payments because her expenses were too much higher than her fixed income could support. Debtor states that she is trying to be current by the hearing date. 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.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Larry Vincelli ("Debtor") is \$2,200.00 delinquent in plan payments (with another \$1,100.00 coming due before the hearing), which represents multiple months of the \$1,100.00 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 Opposition on September 27, 2016. Dckt. 79. Debtor states that since filing this bankruptcy case, he has had unexpected medical expenses related to cancer treatment and a heart attack. Debtor states that he is short on plan payments by one month and expects to be caught up on payments in October when he receives a FAFSA student loan disbursement of \$14,000.00. The court notes that a delinquency of \$2,200.00 is equal to two months of plan payments, not one month.

Debtor requests that the matter be continued for forty-five (45) days.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 4, 2016. Dckt. 81. The Trustee confirms that Debtor is delinquent by \$2,200.00 still. The Trustee states that he has no objection to continuing the matter by forty-five (45) days to allow the Debtor to become completely current in plan payments.

Unfortunately for the Debtor, a promise to pay is not evidence of such. Cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

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

5. [16-24802-E-13](#) **KEVIN/BRANDEE MCCANN** **MOTION TO DISMISS CASE**
 DPC-2 David Foyil 9-9-16 [\[23\]](#)

WITHDRAWN BY M.P.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 26, 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,160.00 delinquent in plan payments, which represents multiple months of the \$1,040.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

7. [16-21305-E-13](#) **RODERICK/ROSEMARIE TAPNIO** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **9-13-16** [\[101\]](#)

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 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 Motion to Dismiss is granted, and the case is dismissed.

The Trustee's Motion argues that Roderick Tapnio and Rosemarie Tapnio ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 26, 2016. The Trustee states that Debtor must be current for all payments under any pending plan by the October 12, 2016 hearing.

Debtor filed Opposition on September 28, 2016. Dckt. 105. Debtor states that they will file, set, serve, and be current under an amended plan prior to the hearing.

DISCUSSION

A review of the docket shows that Debtor filed a Second Amended Chapter 13 Plan on October 4, 2016. Dckt. 109. Neither Debtor's Motion to Confirm (Dckt. 107) nor their corresponding Declaration (Dckt. 110) offers any explanation for the delay in setting a plan for confirmation. Debtor's Opposition offers no reason for the delay. Debtor does not offer any testimony in opposition to the Motion to Dismiss, but merely have their attorney argue that a plan will be filed in the future.

Debtor has filed an Amended 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. 107, 110. The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity). Instead, the Motion merely states two of the required grounds under 11 U.S.C. § 1325(a) and then tells the court, “The Motion and proposed plan complies with 11 U.S.C. § 1325(a), 1329(a), § 1322(b), § 1323(c) and all other applicable provisions of the code [whatever they may be so we can win (parenthetical commentary of the court)].”

First, merely stating that the Debtor meets all of whatever is required under the Bankruptcy Code is not stating grounds with particularity. It is the equivalent of merely pleading the legal conclusion that the defendant committed a tort so the plaintiff gets big bucks in damages. Such conclusory pleading is not allowed in complaints that have a lesser pleading standard of “a short and plain statement of the claim showing that the pleader is entitled to relief;....” Fed. R. Civ. P. 8(a)(2); Fed. R. Bankr. P. 7008; *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 884 (2009); and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

The validity of this allegation is further undercut by stating (subject to the certifications of Fed. R. Bankr. P. 9011) that granting the motion is proper under 11 U.S.C. § 1329. That section applies only to modifying a confirmed Chapter 13 Plan. No plan has been confirmed in this case, and there is no bona fide reason for citing the court that section as a basis for confirmation. FN.1.

FN.1. It may be that the lack of compliance with Federal Rule of Bankruptcy Procedure 9013 is part of an office procedure to create generic documents that can be filed for whatever relief is requested, and so long as all the court does is read the caption, there is no need to really comply with the law.

The court notes that denial of confirmation of the prior plan was not merely for some “technical error,” but substantive legal and good faith reasons. Civil Minutes, Dckt. 97. Presumably, after such a ruling, Debtor would have made sure that they did it right, dotted the “i’s” and crossed the “t’s” for the court. They have not done so, treating the motion as a mere perfunctory annoyance for Debtor.

Debtor’s declaration does somewhat better, appearing to provide some testimony based on personal knowledge. Fed. R. Evid. 601, 602. However, it does manifest either a complete lack of understanding of the Plan being proposed or that Debtor did not read the declaration before signing it. Debtor appears unable to testify as to how they are proposing to address their secured claim, being only able to state under penalty of perjury:

“10. That the plan provides that the holder of each allowed secured claim provided for by the plan either; (1) accepted the plan, (2) retains the lien and securing such claim and the value, as of the effective date of the plan, of property to be distributed is not less than the allowed amount of such claim, or (3) I am surrendering the property securing such claim to such holder.”

Declaration ¶ 10, Dckt. 110. It does the court little good to have a debtor merely parrot the language of the Bankruptcy Code (in this case 11 U.S.C. § 1325(a)(5)) without regard to the actual conduct being

undertaken. Here, from reading Debtor's testimony under penalty of perjury, the court might be led to believe that Debtor was admitting that they were surrendering all of their property that is collateral for all creditors. The court has addressed such "non-testimony testimony" with Debtor's counsel and other consumer attorneys, and such "testimony" could not be given because Debtor is trying to mislead the court or slyly not provide testimony under penalty of perjury.

The proposed Plan, Dckt. 109, contains an additional provision in which Debtor states that they are prosecuting an adversary proceeding to "void the sale" conducted by the holder of the second deed of trust against the property. The Proposed Plan makes no provision for addressing this secured debt, if Debtor is successful or depositing any money to support using the automatic stay in lieu of obtaining an injunction and posting the required injunction bond. Fed. R. Civ. P. 65©; Fed. R. Bankr. P. 7065; and *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), *aff'd*, *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

The proposed Plan does not include any provision for continuation of the automatic stay as to the holder of the second deed of trust and expressly states that all property of the estate shall revert in the Debtor upon confirmation. Plan ¶ 5.01, Dckt. 109. When no longer property of the estate, the automatic stay may terminate. *See* 11 U.S.C. § 362(a)(3), (4).

In reviewing the Adversary Proceeding filed, Adv. Proc. No. 16-2155, the court notes that it is not being actively prosecuted. Though filed on August 1, 2016, and naming Wells Fargo Bank, N.A. as the defendant, Debtor has now dismissed Wells Fargo Bank, N.A. and states that they will be again amending the Complaint sometime in the future to name the proper party. 16-2155; Status Report, Dckt. 23. Though Wells Fargo Bank, N.A. was dismissed from the Adversary Proceeding on September 14, 2016 (*Id.*; Order, Dckt. 18), no further amended complaint has been filed and no defendant served.

Debtor does not appear to be actively prosecuting this Chapter 13 Bankruptcy Case or prosecuting a plan to address their debts and creditors. The proposed Plan, if confirmed, could perversely work against the Debtor by terminating the automatic stay and allowing the holder of the second deed of trust to actively deal with the property at issue.

In addition to the procedural and substantive problems with the Debtor's conduct in this case, the Debtor has failed to offer an explanation for not promptly filing a plan. Instead, they appear to be content with merely being under the radar, enjoying the automatic stay, and hiding from the court until the Chapter 13 Trustee stirs the pot. Then, rather than filing a motion that can be granted and a plan that can (or should as protecting the rights and interests of the estate), Debtor files pleadings that are destined (and possibly designed) not to be granted or confirmed, preventing the Debtor from being legally committed to performing a Chapter 13 plan.

Cause exists to dismiss this case. 11 U.S.C. § 1307(c). The Motion is granted, and the bankruptcy 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 Chapter 13 case is dismissed.

8. [16-25210-E-13](#) **MARCO SIERRA**
DPC-1 Pro Se

MOTION TO DISMISS CASE
9-26-16 [40]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 26, 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

The Trustee also states that the Debtor is \$250.00 delinquent in plan payments, which represents one month of the \$250.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the period of sixty (60) days 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).

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

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

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

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

9.	<u>16-24712</u> -E-13 DPC-2	MITCHELL/CANDICE SITTINGER Chad Johnson	MOTION TO DISMISS CASE 9-9-16 [<u>21</u>]
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Final Ruling: No appearance at the October 12, 2016 hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on September 27, 2016, Dckt. 37; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtors; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be

11. [16-23615](#)-E-13 TATYANA MOLITVENIK
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-6-16 [51]**

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

The Order to Show Cause was served by the Clerk of the Court on Tatyana Molitvenik (“Debtor”) and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 52) filed on September 6, 2016. The court computes that 36 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$77.00 due on August 30, 2016).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on September 9, 2016 (Dckt. 55), 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.

12. 16-23615-E-13 **TATYANA MOLITVENIK**
Pro Se

**CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
7-6-16 [34]**

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

The Order to Show Cause was served by the Clerk of the Court on Tatyana Molitvenik (“Debtor”) and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 35) filed on July 6, 2016. The court computes that 98 days’ notice has been provided.

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

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on September 9, 2016 (Dckt. 55), 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.

13. [16-23615](#)-E-13 TATYANA MOLITVENIK CONTINUED OBJECTION TO
DPC-1 Pro Se CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-19-16 [\[36\]](#)

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

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

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

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

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

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

14. [16-23615](#)-E-13 TATYANA MOLITVENIK CONTINUED MOTION TO DISMISS
DPC-2 Pro Se CASE
7-27-16 [\[40\]](#)

CASE DISMISSED: 09/09/2016

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,500.00 delinquent in plan payments (with another \$750.00 coming due before the hearing), which represents multiple months of the \$750.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

16. [11-48117](#)-E-13 MARIANNE SPHAR MOTION TO DISMISS CASE
DPC-1 Cindy Lee Hill 8-31-16 [\[28\]](#)

WITHDRAWN BY M.P.

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

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

17. [16-20117](#)-E-7 ROSALINA LOPEZ MOTION TO DISMISS CASE
DPC-1 Mary Ellen Terranella 8-31-16 [\[33\]](#)

WITHDRAWN BY M.P.

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

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

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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 18, 2016. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee's Motion argues that Bun Auyeung and Soo Tse ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 22, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 27, 2016. Dckt. 264. Debtor asserts the following points:

- A. Debtor's Motion to Avoid Lien of Barton and Paula Christensen and Debtor's Motion to Confirm Plan were denied on July 28, 2014.
- B. An appeal of the Motion to Avoid Lien was filed on August 6, 2014, and that appeal is pending.
- C. The total amount of claims is \$382,329.01, of which \$237,632.27 relates to a surrendered property from the Debtor's prior Chapter 7 case.
- D. Of the remaining \$144,696.74 secured claims amount, Barton Christensen and Paula Christensen have a claim for \$140,000.00.

- E. Debtor's plan proposes thirty-six (36) payments of \$100 and a lump-sum payment of \$13,000.00, which totals \$16,600.00.
- F. Debtor is in month thirty-seven (37) and have paid \$16,700.00.
- G. Debtor's plan would be completed if the appeal is granted in Debtor's favor.

DISCUSSION

Debtor seems to be relying upon a successful appeal of the Motion to Avoid Lien and claim in their Opposition that filing an amended plan would be "duplicative" of the plan that this court has denied already. Dckt. 264. Therefore, Debtor argues that there is "no need" for any confirmed plan, but Debtor can live in Chapter 13, with no plan, as long as they desire, with no stay pending appeal required. In effect, Debtor argues that they, as the only consumers in the United States, are entitled to a perpetual automatic stay, so long as they disagree with this court's ruling on the motion to value and the ruling of the Bankruptcy Appellate Panel from the first level of appeal.

As detailed in this court's ruling denying the motion to avoid the lien (Civil Minutes, Dckt. 138), Debtor has been "challenged" in being truthful and honest with the court. Debtor's excuse for failing to perform the obligations promised to the court and creditors in the confirmed Chapter 13 Plan in Debtor's prior case (which terms were stated in an order written by Debtor's Counsel) was first that they didn't know they were suppose to perform the portion of their plan that required for the marketing and sale of the specified real property.

When the fallacy of that argument was exposed, Debtor's Counsel fell back on the contention that Debtor was so annoyed at the conduct of their financial nemesis that they just could not do what was required under the Plan. What Debtor, and Counsel, ignore is that in the prior case Debtor's financial nemesis was called to task and the court entered judgment for Debtor for \$13,709.95, for violation of the stay and an additional \$1,550.00 for emotional distress damages. Adv. Proc. 10-2497; Judgment, Dckt. 72. No motion for attorneys' fees or costs bill was filed in the Adversary Proceeding. To the extent that Debtor needed to have their "outrage" at the conduct of their nemesis vindicated, the court was unabashed in calling out the misconduct of the nemesis in the Memorandum Opinion and Decision in the Adversary Proceeding. *Id.*, Dckt. 71.

The lack of action and Debtor's contention to have the right to sit in a Chapter 13 case for now more than three years without any confirmed plan demonstrates that a lack of good faith continues. In converting the prior Chapter 13 case to one under Chapter 7, the court stated:

"Rather than proceeding in good faith to timely comply with the confirmed bankruptcy plan, the **Debtors have demonstrated that they are merely engaging in a gamble on the current real estate market.** The Debtors are gambling with the creditors money that the market will rise, allowing the Debtors to pocket more money from a sale. If the market goes down, then creditors can bear the risk (suffer the loss).

The Debtors obtained two and one-half years of bankruptcy court protection, with all to show is that they will, sometime in the future, do what they have promised to do in the past, if they determine that the real estate market has risen high enough for them to make more money from further improperly delaying creditors and continuing to break their promise to promptly liquidate the Property.

No evidence has been filed by the Debtors in opposition to the Motion to Dismiss. Rather, **they have hidden behind short arguments of counsel, most of which are based on unsupported factual contentions.** Such argument is not evidence of the facts alleged therein. The absence of such evidence causes the court to infer that such information is wholly unsupported and not accurate. Even when afforded the opportunity to file supplemental pleadings, the **Debtors elected to further hide behind their attorneys Supplemental Reply arguing why the case should not be dismissed. The Debtors have been careful not to make any further statements under penalty of perjury to the court.**

At the January 9, 2013 hearing the Debtors asked the court to continue the hearing and provide the Debtors with more time to market and then sell the Property. To accede to this request **would result in the court permitting the Debtors to profit from their fraud and misrepresentations to the court and creditors.** Debtors supplemental opposition states that Debtors have obtained a real estate agent and that the sale price is listed as \$200,000 instead of the \$250,000 initially stated by Debtors. Counsel for the Debtors argues that a modified plan will provide for all increases in value to go to creditors, with the Debtors reducing their exemption. However, the courts review of the docket indicates that a modified plan has not been filed, the Debtors have not reduced their exemption, or otherwise made firm commitments to properly prosecute this case. These indirect indications of what the Debtors might be willing to do, at some future date, if events develop in such a way as it is advantageous to the Debtors, carry little weight.

...

Though the courts November 14, 2011 confirmation order expressly requires that the Debtors shall immediately list the property for sale at \$290,000.00 and shall have the property liquidated (sold) by September 2012, the **Debtors did not actively attempt to sell the property. Rather, they impeded the sale of the property, seeking to gamble that the real estate market would increase and they could pocket more the sales proceeds.**

The **Debtors, in responding to this Motion, have been very careful not to provide any explanation under penalty of perjury as to the efforts they made to market and sell the property.** From this lack of testimony the court infers that such testimony would be adverse to the Debtors showing that they did not attempt to actively market and sell the property as required under the confirmed Fourth Amended Chapter 13 Plan. Nevertheless, the court must ensure that all parties are protected in this bankruptcy case. Debtors must propose an amended plan with a

provision indicating to the court that they are prosecuting an appeal of this court's denial of a Motion to Avoid Lien.

...

The Debtors conduct in this case under the confirmed plan have been in bad faith. Though representing to the court and creditors, and being ordered under the confirmed Fourth Amended Chapter 13 Plan, to promptly proceed with the liquidation of the real property commonly known as 6311 Point Pleasant Road, Elk Grove, California, the Debtors did not proceed with selling the Property. One year is more than sufficient to market and sell real property average consumers, business persons, other Chapter 13 debtors and debtors in possession, and bankruptcy trustees do it regularly. The court finds that the **Debtors did not prosecute the case because they were hoping to realize a greater gain, gambling that the real estate market would appreciate, allowing them to exempt even more of the sales proceeds.**

The gambling on a rise in the real estate market was not in good faith, and directly caused creditors to suffer unreasonable delay to their prejudice. The Debtors have continued in the possession and use of the property without making regular, equal monthly payments to creditors with liens on the property. While this court believes that a debtor may proceed with an orderly, prompt liquidation of assets as part of a Chapter 13 Plan, they cannot falsely promise to liquidate the property. Here, the Debtors actively misrepresented to the court that they would liquidate the property, while intending not to sell the property but allow it to hopefully appreciate in value. **The Debtors secret, unstated plan has been to hold the property idle in the Chapter 13 case and then stumble in to amend the confirmed plan to have more time to gamble on appreciation of the property.**

...

At the hearing, counsel for the **Debtors professed to have some confusion over the order providing for the sale to be completed by September 2012**, at one point disputing that the order so provided. The court recited the provision of the order, as well as noting for **Debtors counsel** that he **is the one who actually prepared the order confirming the Plan**. There is, and there was, **no bona fide confusion** that the Debtors promised and were ordered to complete the liquidation of the property by September 2012.

09-35065; Civil Minutes, Dckt. 214 (emphasis added).

Debtor's response to the present Motion continues to manifest the continuing bad faith and lack of any intention to comply with a debtor's duties and obligations under the Bankruptcy Code. Again, Debtor has hidden from the court, putting forth their attorney to submit an "Opposition" for which Debtor is unwilling to provide any testimony under penalty of perjury or provide any evidence. Opposition, Dckt. 264.

Debtor's Counsel argues that Debtor need not confirm a Plan because they have made all the payments on the prior plan for which confirmation has been denied. Debtor's Counsel offers no legal authorities for this proposition. No points and authorities is filed in opposition to the motion, and no legal

authorities are cited in the Opposition. Rather, Debtor continues to manifest contempt for the law and that they, based upon whatever they say, are the law.

Debtor argues that because “the plan will be duplicative of the denied plan,...” there is nothing more for them to do under the Bankruptcy Code. Debtor ignores that they need to confirm a plan. Debtor, and Counsel, have been very careful not to commit the Debtor to anything under a confirmed plan, make any adequate protection provisions while they are idle in bankruptcy using the automatic stay as a free stay pending appeal, and make no provision for creating a self-funding a bond in lieu of positing an injunction bond as otherwise required by Federal Rule of Civil Procedure 65(c) and Federal Rule of Bankruptcy Procedure 7065. *See In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), *aff’d*, *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

Debtor’s continuing bad faith is demonstrated by their cavalier use of the automatic stay for three years without confirming a Chapter 13 plan. While Debtor proudly states that to making the payments on the plan filed—confirmation of which has been denied by the court—so how can they be in default, there is no plan being prosecuted, and there is no plan by which Debtor’s proper payment amounts and conduct can be measured. Again, Debtor and Counsel argue, demand, instruct the court that because Debtor believes that they should be able to sit in bankruptcy for three years without making good faith efforts to confirm a plan, and therefore the court should let Debtor engage in such inaction. This is bad faith on all accounts, unsupported by any law or authorities.

The court notes that Debtor’s Counsel is very experienced and appears regularly in this court. He has sat in court observing many hearings where the court has discussed with other counsel (if not Debtor’s Counsel) plans that include provisions for litigation, appeals, and adequate protection funds created in lieu of injunction or stay on appeal bonds. Such are not foreign concepts, and if Debtor was willing to prosecute this case in good faith, Debtor’s Counsel could advance such a plan. None is forthcoming.

The court is suspicious that the lack of response may be further part of Debtor’s scheme to profit from the prior fraud upon the court for which judicial estoppel was applied—delay to prejudice creditors so that Debtor could claim a larger exemption in the property while they gambled (with the creditor’s money) that the real estate market would rise. Though dismissal is what Debtor may secretly, in bad faith, want, this court is confident that a sufficient record of their misconduct, fraud, and lack of prosecution has been created for consideration by any future court.

Cause exists to terminate the stay. Debtor is intentionally, and in bad faith, not prosecuting this case. Debtor is intentionally and in bad faith not attempting to confirm a plan. Debtor is causing unreasonable delay that is prejudicial to creditors. Debtor is failing, intentionally and as part of a bankruptcy scheme, to timely file a Chapter 13 plan after denial of the prior plan (which occurred in 2014). Debtor is intentionally abusing the Bankruptcy Code by not prosecuting this case, using it as a device to harm and prejudice creditors, specifically Barton Christensen and Paula Christensen, their “nemesis creditors.”

Debtor also is intentionally abusing and misusing this court and the federal judicial process. They hide from the court, failing or refusing to provide testimony under penalty of perjury. This is not a new phenomenon, but has continued throughout their various cases where they send their attorney out to make

arguments and contentions. While Debtor can, and should, appeal decisions of the trial court and initial appellate court that they deem proper, that is not an excuse to then ignore the Bankruptcy Code and create a “special body of law” in which Debtor can lounge in Chapter 13 without a plan, paying what they determine to be proper, and have the automatic stay remain in effect for years or decades without ever confirming a Chapter 13 Plan.

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

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

The Motion to Dismiss the Chapter 13 case filed by the 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 Chapter 13 case dismissed.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,964.00 delinquent in plan payments (with another \$741.00 coming due before the hearing), which represents multiple months of the \$741.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a one-sentence "Request for Dismissal Without Prejudice" on September 14, 2016. Dckt. 29. The court accepts this as Debtor's non-opposition to granting this motion and dismissing the bankruptcy case.

The Motion is granted, and the case is dismissed.

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

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

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

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

20. [16-24721](#)-E-13 **SHIRLEY SHEPARD** **MOTION TO DISMISS CASE**
DPC-2 **Scott Hughes** **8-31-16 [24]**

Final Ruling: No appearance at the October 12, 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 31, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,850.00 delinquent in plan payments, which represents one month of the \$1,850.00 plan payment. Failure to make plan payments 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 returns for the 2013 and 2014 tax years still have not been filed. Filing of the returns 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 court shall issue a minute order substantially in the following form holding that:

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

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

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

21. [16-25321](#)-E-13 **JAY COHEN**
 Steele Lanphier

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-16-16 [14]

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

The Order to Show Cause was served by the Clerk of the Court on Jay Cohen (“Debtor”), Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 15) filed on September 16, 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 (\$79.00 due on September 12, 2016).

<p>The Order to Show Cause is discharged, and the case shall proceed in this court.</p>
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The court’s docket reflects that the default in payment that is the subjection of the Order to Show Cause has been cured.

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

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

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

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

Final Ruling: No appearance at the October 12, 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 September 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtors are \$15,046.98 delinquent in plan payments, which represents multiple months of the \$650.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The court shall issue a minute 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 October 12, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,075.00 delinquent in plan payments (with another \$1,005.00 coming due before the hearing), which represents multiple months of the \$1,005.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,736.00 delinquent in plan payments (with another \$868.00 coming due before the hearing), which represents multiple months of the \$868.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a response to the Trustee's motion on September 27, 2016. Dckt. 125. Debtor anticipates becoming current on or before the date of the hearing. Debtors states that if he is unable to become current, a modified plan will be filed. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 19, 2016. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,670.00 delinquent in plan payments, which represents one month of the \$1,670.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Moreover, Debtor admitted at the Meeting of Creditors that federal income tax returns for the 2013, 2014, and 2015 tax years still have not been filed. Filing of the returns 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 court shall issue a minute order substantially in the following form holding that:

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

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

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

26. [13-34027](#)-E-13 EILEEN MOFFITT MOTION TO DISMISS CASE
DPC-3 Joseph Canning 8-31-16 [[103](#)]

WITHDRAWN BY M.P.

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

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

27. [16-24229](#)-E-13 RANJIT BAINS MOTION TO DISMISS CASE
DPC-2 Richard Sturdevant 9-14-16 [[24](#)]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Ranjit Bains ("Debtor") did not commence making plan payments and is \$4,744.00 delinquent in plan payments (with another \$2,372.00 coming due before the hearing), which represents multiple months of the \$2,372.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

DEBTOR'S OPPOSITION

Debtor filed an Opposition to the Trustee's Motion on September 28, 2016. Dckt. 29. The Opposition states that Debtor gave TFS billpay the incorrect bank account number, leading to two payments not being processed due to insufficient funds, even though Debtor had the funds in a different account. Debtor states that he called TFS billpay and scheduled for a payment to be processed to pay the two outstanding plan payments, but Debtor's father passed away Monday September 19. Debtor says he used the money that was to be paid to the Trustee to pay for funeral expenses, and thus, Debtor does not have the funds on hand to pay the three outstanding plan payments.

Debtor also states that he missed the First Meeting of Creditors because his employer would not allow him the time off. Debtor claims that he would have been terminated had he attended. The Opposition states that Debtor will attend the Continued Meeting of Creditors scheduled for October 13, 2016.

The Opposition states that Debtor's amended plan will make up the missed payments over the remaining fifty-seven (57) months of the Plan.

The court notes that on September 29, 2016, an amended plan was filed. Dckt. 31. However, no motion to confirm the amended plan, or any supporting pleadings, have been filed and served.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,756.00 delinquent in plan payments (with another \$439.00 coming due before the hearing), which represents multiple months of the \$439.00 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 October 12, 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 (*pro se*) and Office of the United States Trustee on August 22, 2016. By the court's calculation, 51 days' notice was provided. 28 days' notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017.</p>
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David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on August 22, 2016. Dckt. 45. The Trustee seeks dismissal due to the Debtor's delinquency and failure to file an Amended Plan and set it for confirmation.

DEBTOR'S OPPOSITION

Danny Rue ("Debtor") filed an opposition on September 28, 2016. Dckt. 61. The Debtor states that he will be adjusting the plan payments in the Amended Plan (Dckt. 67) so that the plan payment amount will be \$1,324.00 because a \$73,676.00 pre-petition arrears claim of American Servicing Company has been eliminated. Debtor is currently working with lender for a modification of his mortgage loan and is awaiting authorization for the trial loan modification.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 5, 2016. Dckt. 71. The Trustee states that since the case was filed on April 28, 2016, the Debtor has made only one payment (on May 27, 2016) of \$2,234.00. Debtor's mortgage servicer America's Service Co. has received one payment of \$1,946.00. The Trustee states that the amended plan is not confirmable, especially because Debtor is delinquent under it.

The Trustee notes that Debtor has filed eleven (11) bankruptcy cases since 2008, including:

CASE NO.	DATE FILED	DISPOSITION & DATE	CHAPTER
16-22732	4/28/16	ACTIVE CASE	CHAPTER 13
14-29671	9/29/14	DISMISSED 6/29/15	CHAPTER 13
14-24181	4/23/14	DISMISSED 8/22/14	CHAPTER 13
13-33851	10/28/13	DISMISSED 4/23/14	CHAPTER 13
13-24737	4/5/13	DISMISSED 10/18/13	CHAPTER 13
13-21452	2/1/13	DISMISSED 5/20/13	CHAPTER 13
12-29177	5/11/12	DISMISSED 10/24/12	CHAPTER 13
11-43836	10/3/11	DISMISSED 4/23/12	CHAPTER 13
11-25228	5/26/11	DISCHARGED 9/27/11	CHAPTER 13 CONVERSION TO CHAPTER 7
10-25066	3/2/10	DISMISSED 3/8/11	CHAPTER 13
08-39044	12/23/08	DISMISSED 3/12/10	CHAPTER 13

The Trustee reports that the United States Trustee has filed an adversary complaint (Case No. 16-2165, Dckt. 41) that is scheduled for hearing on October 12, 2016, at 2:30 p.m. and that raises concerns about the Debtor's repeat filings. The Trustee supports the U.S. Trustee's request to prohibit Debtor from refiling for bankruptcy in any district for three years without first obtaining permission from the bankruptcy court.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,468.00 delinquent in plan payments, which represents multiple months of the \$2,234.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 19, 2016. A review of the docket shows that Debtor filed an Amended Plan on September 28, 2016. Dckt. 67. Debtor remains delinquent under that Plan, however, which is cause to dismiss the case. *See* 11 U.S.C. § 1307(c)(1).

Though grounds exist to dismiss this case, given the active prosecution of the Adversary Proceeding by the U.S. Trustee in which the U.S. Trustee asserts that grounds exist to qualify Debtor's rights

to file a twelfth and subsequent cases, discretion dictates continuing this hearing and continue in the administration of the current (eleventh) Chapter 13 case filed by Debtor.

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

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

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

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

30.	<u>11-41634-E-13</u>	EXCELL/JACQUELINE ROBINSON Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO TENDER FEE FOR FILING TRANSFER OF CLAIM 9-26-16 [168]
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Final Ruling: No appearance at the October 12, 2016 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Excell Robinson, Jr. and Jacqueline Robinson ("Debtors"), Debtors' Attorney, Ocwen Loan Servicing, LLC, and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 169) filed on September 26, 2016. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtors' failure to pay the required fees in this case (\$25.00 due on September 16, 2016).

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

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

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

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

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

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

31. [16-23034](#)-E-13 **GREG SHOOK** **MOTION TO DISMISS CASE**
DPC-3 Pro Se 9-13-16 [\[58\]](#)

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on September 13, 2016. Dckt. 58. The Trustee seeks dismissal due to Greg Shook's ("Debtor") delinquency and Debtor's failure to set a confirmation hearing date for his Amended Plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 28, 2016. Dckt. 68. The Debtor states that he is not delinquent in plan payments because Debtor's original Plan called for payments of only \$129.00 per month, which Debtor states he paid for the months of June and July. Debtor states that when he discovered the filed proof of claim, he filed his First Amended Plan, which increased the plan payment to \$229.00. Debtor says that the Amended Plan specifically stated that payments would start with the August payment. Debtor indicates that he never said he would change the amount paid for the June or July payments; so, he is not delinquent on any plan payments.

The Debtor's opposition also indicates that he intends to file a Motion to Confirm the Plan prior to October 12, 2016, but is having difficulty calculating the total amounts due under the plan and anticipates

having to increase plan payments over the five years in order to complete it on time and in full. Debtor's research of the Social Security website indicates that there will be an approximate monthly interest of \$27.00 in 2018 and \$24.00 in the following years. Debtor states that he will increase his plan payment relative to above or actual amount of cost of living adjustments to ward off any possible deficiency.

Next, Debtor's Opposition states that the Proof of Claim filed is incomplete. Debtor indicates that for Question 7 on the Proof of Claim the Creditor failed to attach a statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A), and the Creditor failed to file a Mortgage Proof of Claim Attachment (Official Form 410-A), which is required if the claim is secured by the Debtor's principle residence.

TRUSTEE'S RESPONSE

The Trustee filed a Response on October 5, 2016. Dckt. 71. The Trustee states that Debtor is delinquent under the Amended Plan and that the Debtor has not set a motion to confirm for hearing. The Trustee states in addition that he will object to the Amended Plan on the following grounds:

- A. Delinquency;
- B. Plan exceeds sixty (60) months as proposed;
- C. Debtor has not provided evidence to support the changes made on Amended Schedule J, and the budget is not sufficient for maintenance and support of the Debtor;
- D. Debtor has not filed an adversary proceeding against the County of Lassen as stated in the Plan; and
- E. Creditor County of Lassen's objection to confirmation was sustained on August 16, 2016, and the Debtor has failed to resolve the objections.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments. While Debtor emphasizes that plan payments would start with the August payment and not change the amount paid for June or July, the court is unable to find such a statement in the Plan or Additional Provisions. The Plan indicates in Section 1 that there will be sixty (60) payments of \$229.00. 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 a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 24, 2016. A review of the docket shows that Debtor has filed a First Amended Plan, but he has not yet filed a motion to confirm a plan. Debtor indicates that he thought opposing the objections to plan confirmation would be sufficient to allow the Plan to be confirmed at the hearing. Debtor has stated that he intends to file a Motion to Confirm the Plan by October 12, 2016. Unfortunately, a promise to file is not evidence of such. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. §1307(c)(1). FN.1.

FN.1. The other grounds on which Debtor opposes the Instant Motion, notably his objection regarding the Proof of Claim, are not relevant to the Trustee's Motion to Dismiss. Any issues the Debtor has regarding the Proof of Claim should be addressed separately, not through Opposition to the Trustee's Motion to Dismiss.

In reviewing the Debtor's prior filings, the court identifies the real dispute, which has nothing to do with the Bankruptcy Code, a restructure of Debtor's finances, or any other federal issue. In opposing Lassen County's objection to confirmation, asserts that Lassen County has no right to assess or collect property taxes. The high points of these arguments are:

- A. "I will be filing an objection to the proof of claim as an adversary proceeding due to the fact that my freehold is being taxed without statutory authority of which Lassen County has been ignoring since the year 2000."
- B. Citing to *People v. Shearer*, 30 Cal. 645 (1866).
- C. "Debtor understands that this concept will be new to this Court and most everyone since we have been brainwashed from birth to believe that all property is taxed in the form of property taxes in 'this state' as well as many others. I am here to tell you that at least in my case, that has not been the truth."
- D. "I am hoping that my issues with the county of Lassen will be resolved before the next post petition payment would be due in December. If not, I may put the amount into an escrow with the federal court in the case I have opened up there until such resolution."

Opposition, Dckt. 28.

The Amended Chapter 13 Plan filed on August 2, 2016 (Dckt. 36) provides for the following basic terms:

- A. Monthly Plan payment of \$229.00 for sixty months.
- B. Class 1 Claims.....None
- C. Class 2 Claims
 - 1. Lassen County.....\$222.00 a month for a \$12,879.25 claim.
- D. Class 3 Claims.....None
- E. Class 4 Claims.....None
- F. Class 5 Claims.....None

- G. Class 6 Claims.....None
- H. Class 7 Claims.....None.
- I. Additional Provisions
 - 1. The Class 2 Claim is for a property tax issue that Debtor has been dealing with since 2000.
 - 2. Taxes have been misapplied to Debtor's private property.
 - 3. Lassen County Tax Collector fails to comply with the law, even though Debtor has presented the law to the Tax Collector.
 - 4. Debtor intends to file an adversary proceeding to object to Lassen County's claim on "multiple issues."

These "additional terms" do not provide any additional terms of the plan. A review of the court's files indicates that no objection to claim or adversary proceeding has been filed.

On Schedules E/F, Debtor states under penalty of perjury that he has no creditors with priority or general unsecured claims. The one creditor listed on Schedule D having a secured claim is Lassen County, whose claim is disputed. Dckt. 11.

Financial Information Provided by Debtor

Debtor's plan provides for a \$229.00 a month payment. Of this, about \$210.00 a month is available to pay creditor claims. (Assumes an 8% Chapter 13 Trustee fee.) With Debtor having only one creditor, payments of \$210.00 a month for sixty months will equal \$12,600.00, a couple hundred dollars short of Lassen County's secured claim as of the commencement of this case. No provision is made for the payment of any interest on the secured claim.

On Schedule I, Debtor states he is retired and has \$1,001.00 a month in income. Dckt. 11 at 23. The income is from Social Security and public support, which does not appear to be income that is subject to any significant increase. Debtor computes his Monthly Net Income on Schedule J to be only \$129.00, about half of the proposed Plan payment. To receive even the \$129.00 figure, Debtor states that he has the following expenses:

- A. Rent/Mortgage.....None
- B. Property Tax (alleged).....\$ 84
- C. Homeowners Insurance.....None
- D. Home Maintenance.....None
- E. Electricity/Heat.....\$ 85
- F. Water/Dump.....\$ 8

G.	Phone/Internet/Cable.....	\$213
H.	Food and Housekeeping Supplies.....	\$275
I.	Clothing.....	None
J.	Laundry.....	None
K.	Personal Care Products.....	None
L.	Medical/Dental.....	None
M.	Transportation.....	\$ 40
N.	Entertainment.....	None
O.	Charitable/Donations.....	None
P.	Health Insurance.....	None
Q.	Vehicle Insurance.....	\$102
R.	Animal Fee and PO Box Fees.....	\$ 65

Dckt. 11 at 24-26.

It appears that even to generate an amount that is 50% less than the proposed plan payment, Debtor relies on unreasonable and unrealistic “expenses.” It is not reasonable to assert that over sixty months Debtor would have: (1) No Homeowners Insurance Expense; (2) No Home Maintenance Expense; (3) No Clothing Expense; (4) No Laundry Expense; (5) No Personal Care Product Expense; (6) No Medical or Dental Expense; and (7) Only a \$40 Transportation (gas, maintenance, repairs, registration, and public transit) Expense.

While filling in boxes on the Plan, Debtor does not demonstrate that he is pursuing his rights under the Bankruptcy Code or attempting to prosecute a good faith Chapter 13 Plan.

Proper Exercise of Federal Judicial Power

Before a federal court exercises its jurisdiction over parties, it must determine that there is a sufficient “case” or “controversy as required by the United States Constitution, Article III, Section 2, Clause 1, which states,

Sec. 2, Cl 1. Subjects of jurisdiction.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

As stated by the Ninth Circuit Court of Appeals in *Southern Pacific Company v. McAdoo*, 82 F.2d 121, 121–22 (9th Cir. 1936),

Unless this proceeding was within the original jurisdiction of the District Court, it could not be brought within that jurisdiction by removal. *In re Winn*, 213 U.S. 458, 464, 29 S. Ct. 515, 53 L. Ed. 873. Unless it presents a “case” or “controversy,” within the meaning of section 2, art. 3 of the Constitution, it is not within the jurisdiction of any federal court. *Nashville, C. & St. L. Ry. Co. v. Wallace*, 288 U.S. 249, 259, 53 S. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; *Willing v. Chicago Auditorium Ass’n*, 277 U.S. 274, 289, 48 S. Ct. 507, 72 L. Ed. 880; *Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 74, 47 S. Ct. 282, 71 L. Ed. 541.

Jurisdiction was granted to the district courts and bankruptcy courts to the extent that issues arise under the Bankruptcy Code, in the bankruptcy case (such as administration of an asset), or relate to the (administration or outcome of a) bankruptcy case. 28 U.S.C. § 1334(a) and (b). However, recognizing this broad reach of federal court jurisdiction, Congress also provided that federal judges may, and in some situations are required to, abstain from hearing matters though federal court jurisdiction under § 1334 may exist. *See* 28 U.S.C. § 1334(c).

As provided in 28 U.S.C. § 1334(c)(1),

(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

This court has previously addressed the issue of when a bankruptcy court judge should utilize federal bankruptcy jurisdiction to adjudicate issues between parties which determination will have no bearing on the bankruptcy case and do not concern Bankruptcy Code issues. *See Pineda v. Bank of America, N.A. (In re Pineda)*, 2011 Bankr. LEXIS 5609 (Bankr. E.D. Cal 2011), *aff’d*, *Pineda v. Bank of America, N.A. (In re Pineda)*, 2013 Bankr. LEXIS 1888 (B.A.P. 9th Cir. 2013). Such jurisdiction should be carefully used by the federal courts to the extent necessary and appropriate to effectuate the goals, policies, and rights relating to bankruptcy cases, and not as a device to usurp state courts of general jurisdiction or the district as the trial court for federal matter and diversity jurisdiction.

As discussed above, while Congress has granted a broad swath of federal jurisdiction for this court for matters arising under the Bankruptcy Code, in the bankruptcy case, or related to the bankruptcy case, there are limits. The federal court adjudication must be tied to at least one of the three, and the filing of a bankruptcy case merely used as an excuse for having the federal judicial process intrude on a non-federally-related matter.

Debtor appears to have a one-party dispute, that being with Lassen County, California. He asserts that under applicable California law, the County does not have a right to tax him for the real property. Debtor states that he is prosecuting a challenge under California law that runs contrary to what everyone has been “brain-washed” with concerning the power of the State and its political subdivisions to tax income and property in California.

It further appears that the only reason the bankruptcy case has been filed is to use the automatic stay rather than obtaining a preliminary injunction from a court that properly exercises judicial power to determine a state law dispute. There not being any bankruptcy purpose being prosecuted, that is not the bankruptcy court. It does not appear that Debtor is asserting a claim or controversy under federal law, so whether federal judicial power could be properly be exercised by a district court judge is questionable. That leaves the court of general jurisdiction, the California Superior Court.

DECISION

Debtor not prosecuting a plan or case as permitted under the Bankruptcy Code, cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

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

32.	<u>15-26938-E-13</u> DPC-2	GALEN BACH Eric Schwab	MOTION TO DISMISS CASE 9-9-16 <u>[32]</u>
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Final Ruling: No appearance at the October 12, 2016 hearing is required.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted and the case is dismissed.</p>

The Trustee argues that the Debtor did not commence making plan payments and is \$1,512.38 delinquent in plan payments. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee also moves to dismiss based on the Debtor's failure to provide the Trustee with the Business Questionnaire for either of Debtor's businesses: Twin Rivers Gunsmithing and Clarke's Press Technology. Without the Debtor submitting the required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

34. [16-22741](#)-E-13 **RICHARD/GLENNA VIOLETTE** **CONTINUED MOTION TO DISMISS**
DPC-2 **Stephen Murphy** **CASE**
8-22-16 [\[35\]](#)

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtors are \$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 Debtors did not file an Amended Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtors' prior plan on July 19, 2016 (Dckt. 32). A review of the docket shows that Debtors have not yet filed an amended plan or a motion to confirm

a plan. Debtors offer 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 also 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).

SEPTEMBER 7, 2016 HEARING

At the hearing, the court continued the Motion to Dismiss to 10:00 a.m. on October 12, 2016.

DISCUSSION

No supplemental pleadings have been filed by the Debtors or by the Trustee. Without sufficient evidence that any of the Trustee's objections have been cured, the court interprets the parties' silence as statements that the objections are outstanding 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.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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

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

The Motion to Dismiss is XXXXXXXXXXXXXX.

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on September 1, 2016. Dckt. 40. The Trustee seeks dismissal due to Jose Oseguera and April Oseguera’s (“Debtor”) delinquency.

The Trustee seeks dismissal of the case on the basis that the Debtors are \$9,100.00 delinquent in plan payments, which represents multiple months of the \$4,550.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an opposition on September 23, 2016. Dckt. 44. The Debtor states that Debtor Jose Oseguera started a new job in August 2016, resulting in a delay in receiving a paycheck. Debtor asserts that they have made two payments of \$9,100.00. Declaration, Dckt. 45. Debtor states that they intend to make the October 2016 payment by October 6, 2016, so that it will have been made before the hearing.

Though promised, Debtor has not provided the court with evidence that the plan payments are current.

At the hearing, the Chapter 13 Trustee reported XXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.

Cause exists / does not exist to dismiss this case. The motion is XXXXXXXXXX.

The court shall issue a minute 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 **XXXXXXXXXX**.

36. 16-23346-E-13 **JOSHUA BORS** **MOTION TO DISMISS CASE**
DPC-1 **Joseph Canning** **9-14-16 [39]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,536.00 delinquent in plan payments (with another \$1,768.00 coming due before the hearing), which represents multiple months of the \$1,786.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 30, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting 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.	<u>16-24246</u> -E-13 DPC-2	RICHARD CRUZ Eric Vandermey	MOTION TO DISMISS CASE 9-7-16 [44]
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WITHDRAWN BY M.P.

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

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

38. [16-24147](#)-E-13 KATHLEEN MCKELVIE MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 9-7-16 [[16](#)]

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 4, 201x, Dckt. 38; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

39. [12-38452](#)-E-13 RICHARD/CHRISTINA MOTION TO DISMISS CASE
DPC-2 MERCADEL 8-31-16 [[56](#)]
Peter Macaluso

WITHDRAWN BY M.P.

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

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

40. [13-34152](#)-E-13 ALLISON JOHNSON MOTION TO DISMISS CASE
DPC-3 Najeeb Kudiya 9-9-16 [\[90\]](#)

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

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

41. [15-24752](#)-E-13 JAMES EDWARDS MOTION TO DISMISS CASE
DPC-1 Paul Bains 9-13-16 [\[31\]](#)

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 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>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,886.00 delinquent in plan payments (with another \$962.00 coming due before the hearing), which represents multiple months of the \$962.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an Opposition on September 27, 2016. Dckt. 35. The Debtor states that he will be current on or before the hearing date. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

42. [15-26652-E-13](#) **CORY BUCHANAN** **MOTION TO DISMISS CASE**
 DPC-1 **Mikalah Liviakis** **9-13-16 [19]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 9, 2016 By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted and the case is dismissed.</p>

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,996.00 delinquent in plan payments (with another \$999.00 coming due before the hearing), which represents multiple months of the \$999.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed a Response to the Trustee's Motion on September 18, 2016, indicating that Debtor does not oppose dismissal. Dckt. 23.

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.

43. 16-20252-E-13 **LEONARD SCROGGINS** **MOTION TO DISMISS CASE**
 DPC-2 **Mark Briden** **8-31-16 [102]**

Final Ruling: No appearance at the October 12, 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 31, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted and the case is dismissed.
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments (with another \$100.00 coming due before the hearing), which represents multiple months of the

\$100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

OCTOBER 12, 2016 HEARING

The court continues the hearing to afford the Debtor and the U.S. Trustee to address the issues in the Adversary Proceeding commenced by the U.S. Trustee relating to Debtor's filing of multiple prior bankruptcy cases that have been dismissed.

MOTION TO DISMISS

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).

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

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

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

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

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

- A. 11-25844 in *Pro Se*
 - 1. Chapter 13 Filed March 9, 2011
 - 2. Motion to Dismiss for failure to file motion to confirm plan, failure to file tax returns, failure to provide most recent tax return, and failure to provide copies of business records. Dckt. 28.
 - 3. Case converted to Chapter 7 at request of debtor Jeffrey Akzam. Order, Dckt. 42.
 - 4. Discharge entered September 2, 2011.
- B. 13-20155 in *Pro se*
 - 1. Chapter 13 Filed January 7, 2013.
 - 2. Case dismissed because of debtor Jeffery Akzam's failure to file tax returns and Mr. Akzam's failure to file a motion to confirm a Chapter 13 Plan. Civil Minutes, Dckt. 73. The court also determined that the Plan, as proposed by debtor Jeffery Akzam was not feasible and the plan was underfunded. *Id.*
 - 3. In connection with Jeffery Akzam's Chapter 13 case 13-20155, Jeffery Akzam filed an Adversary Proceeding disputing the lien of Option One Mortgage. Adv. 13-2103.
 - a. After granting a motion to dismiss the Complaint, a First Amended Complaint was filed, in which Debtor Dianne Akzam was added as a joint plaintiff with Jeffery Akzam. Debtor Dianne Akzam and her brother Jeffery Akzam disputed the secured claim and alleged violations of the automatic stay.

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

C. 14-30332 in *Pro Se*

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

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

14-28272 <i>In Pro Se</i>	Chapter 13 Case	Filed August 14, 2014 Dismissed September 29, 2014
	<ol style="list-style-type: none"> I. Case dismissed for failure to filed Schedules, Statement of Financial Affairs, and Chapter 13 Plan. II. Court denied Debtor's Motion to Extend the Automatic Stay 11 U.S.C. § 362(c)(3)(B). Dckt. 28. The court discussed in detail the Debtor's history of failure to prosecute prior multiple bankruptcy cases. Civil Minutes, Dckt. 28. III. Also the court issued an order to show cause why the case should not be dismissed due to failure to pay filing fees. 	
14-23825 <i>In Pro Se</i>	Chapter 13 Case	Filed April 14, 2014 Dismissed July 23, 2014
	<ol style="list-style-type: none"> I. Case dismissed because Debtor did not meeting the eligibility requirements for a Debtor in a Chapter 13 case as (1) she did not have any regular income and (2) had not filed a Certificate of Pre-Filing Credit Counseling. Dckt. 49. 	
12-37369 <i>In Pro Se</i>	Chapter 13 Case	Filed September 27, 2012. Dismissed November 19, 2012

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

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

In connection with the most recent filing by Diane Akzam, the U.S. Trustee has commenced an Adversary Proceeding seeking injunctive relief to preclude Diane Akzam from filing further non-productive bankruptcy cases. 15-2247.

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

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

FEBRUARY 17, 2016 HEARING

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

MAY 20, 2016 HEARING

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

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

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

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

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

AUGUST 10, 2016 HEARING

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

The Debtor filed amended Schedules E/F. Dckt. 86. A review of Debtor's Schedules showed the following:

- A. Schedule A (Dckt. 22)
 - 1. 802 Ohio Street
 - a. FMV.....\$240,000
 - b. Value of Debtor's Interest.....\$120,000
 - (1) Nature of Debtor's Interest..... "Homestead"
- B. Schedule B (*Id.*)

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

C. Schedule D (*Id.*)

1. Secured Claims.....None

D. Amended Schedule E (Dckt. 86)

1. Priority Claim.....None

E. Amended Schedule F (*Id.*)

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

F. Schedule I (Dckt. 22)

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

G. Amended Schedule J (Dckt. 34)

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

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

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

1. Part 2, Income

a. Employment or Business

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

b. Other Income

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

2. Part 4, Legal Actions

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

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

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

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

Amended Plan, Dckt. 85.

At the hearing, the court addressed the deficiencies in the prosecution of this case, as well as the apparent inability of the Debtor to prosecute the case. In light of the pending adversary proceeding by the U.S. Trustee for an order and judgment limiting the Debtor from filing further bankruptcy cases, in light of her multiple filing of prior non-productive cases which have been dismissed, the court continued the hearing on this motion. In light of the high likelihood of Debtor just filing another bankruptcy case, continuing the hearing on this motion and adjudicating these issues before another case is filed was consistent with proper judicial management of this case, as well as providing Debtor an environment to obtain assistance in the prosecution of this case, if there is a viable Chapter 13 case to be prosecuted.

OCTOBER 12, 2016 HEARING

At the hearing, the court noted that the Adversary Proceeding is pending still and that no supplemental pleadings have been filed in relation to the instant Motion to Dismiss. The courts concerns are the same as at the August 10, 2016 hearing.

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

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

As this court discussed in *In re De la Salle*, a debtor or trustee can use the automatic stay in lieu of obtaining a preliminary injunction (Fed. R. Civ. P. 65), and posting the necessary bond, by providing an

adequate protection fund. The fund, held by the Trustee or in a blocked account, is created with monthly plan payments (often in the amount of what the monthly mortgage payment would be) being paid into the fund. When the litigation is resolved, this court can then use the fund to pay for Rule 65(c) damages if it is determined that the automatic stay improperly enjoined the third-party from exercising its rights or obtaining possession of property that it was determined to own or be entitled to obtain. If the debtor or trustee wins, the fund can then be released to be disbursed through the plan.

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

The court review of Schedule J indicates that the amounts stated therein are not credible. While purporting to own a home, Debtor has no expenses for property taxes, property insurance, or property maintenance. Debtor will spend next to nothing on clothing and allocates very little for food. It appears that the expenses on Schedule J are made up numbers to mislead the court into believing that a plan can be funded, or to deluded the Debtor herself that bankruptcy presents a litigation option in her battle with the third-party.

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

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

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on January 18, 2017, in light of the pending Adversary Proceeding for the issuance of a prefilng review order and judgment to be entered, and to afford the Debtor the opportunity to seek assistance of counsel to determine whether Debtor can prosecute a feasible Chapter 13 case.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 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 Motion to Dismiss is granted, and the case is dismissed.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$880.00 delinquent in plan payments (with another \$440.00 coming due before the hearing), which represents multiple months of the \$440.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a Response on September 28, 2016. Dckt. 73. The Debtor states that she had been unable to work at times recently because of medical complications, but Debtor has returned to work and expects to receive a paycheck at the end of September 2016. With her next paycheck, she intends to catch up on plan payments to be fully caught up by the time she receives her October 15, 2016 check. Debtor requests that the hearing on the Trustee's Motion to Dismiss be continued until a date after October 15, 2016. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

46. 16-24957-E-13 **KAREN HART**
Peter Macaluso

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
9-2-16 [25]

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

The Order to Show Cause was served by the Clerk of the Court on Karen Hart (“Debtor”), Debtor’s Attorney, and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 26) filed on September 2, 2016. The court computes that 40 days’ notice has been provided.

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

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

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

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

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

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

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

Final Ruling: No appearance at the October 12, 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 September 29, 2016, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 55, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

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

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

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

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

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

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

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

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 and Office of the United States Trustee on August 25, 2016. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Debtors have not provided the Trustee with employer payment advices for the period of sixty (60) days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtors 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.

50. [14-31363](#)-E-13 AARON/MARIA MAREADY MOTION TO DISMISS CASE
DPC-3 Guy Chism 9-1-16 [[132](#)]

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

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

51. [16-24264](#)-E-13 JONNELL DEEN-CHASE MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 8-26-16 [[20](#)]

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

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 26, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$3,400.00 delinquent in plan payments (with another \$1,700.00 coming due before the hearing), which represents multiple months of the \$1,700.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

The Debtor filed an Opposition on September 27, 2016. Dckt. 29. The Debtor states that she will be current on or before the hearing date and will attend the continued Meeting of Creditors. Unfortunately for the Debtor, a promise to appear and to pay is not evidence of such.

Additionally, Debtor offers no testimony in opposition to the Motion. While “promising” to appear at the continued First Meeting of Creditors, Debtor is unable or unwilling to provide any testimony to the court as to why the failure to appear was in good faith and for a *bona fide* reason.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors’ Attorney, and Office of the United States Trustee on August 18, 2016. By the court’s calculation, 55 days’ notice was provided. 28 days’ notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on November 16, 2016.</p>

David Cusick, the Chapter 13 Trustee, filed the instant motion to dismiss on August 18, 2016. Dckt. 41. The Trustee seeks dismissal due to Ndile Njenge and Rachel Ekindesone ("Debtors") being over the unsecured debt limit, the Debtors' failure to file all tax returns during the four-year period preceding the filing of the petition, and the Trustee being unable to verify the identity of the Debtors.

DEBTOR'S OPPOSITION

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

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

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

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

DISCUSSION

The Trustee moves for dismissal based on Debtor Ndile Njenge's failure to file tax returns for the 2012 year. Filing of the return is required. 11 U.S.C. § 1308. Additionally, the Trustee seeks dismissal because he failed to provide the Trustee with proof of social security number. 11 U.S.C. § 521(h)(2). The Co-Debtor has filed as exhibits tax returns for the 2011 and 2012 tax years, as well as the social security cards of both Debtors, thus resolving these portions of the Trustee's Motion to Dismiss.

However, the Trustee also moves for dismissal on the basis that the Debtors are over the unsecured debt limit, disqualifying them from being Chapter 13 debtors. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, unsecured debts of less than \$394,725.00" may be a debtor under Chapter 13. Here, the Debtors dispute the debt owed to the IRS and have filed an Objection to Claim set for hearing on October 25, 2016. Dckt. 33.

Due to the interconnectedness of the instant Motion and the Objection to Claim, the instant Motion to Dismiss is continued to 3:00 p.m. on October 25, 2016.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on November 16, 2016.

53. [15-25168](#)-E-13 **DEBRA MCCLAIN** **MOTION TO DISMISS CASE**
DPC-4 **Peter Cianchetta** **8-26-16 [113]**

Final Ruling: No appearance at the October 12, 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 26, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,150.00 delinquent in plan payments (with another \$1,075.00 coming due before the hearing), which represents multiple months of the \$1,075.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 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.

54.	<u>13-35771</u> -E-13 DPC-2	GREGORY/CHRISTI SMOAK Peter Macaluso	CONTINUED MOTION TO DISMISS CASE 8-9-16 <u>[67]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

The Trustee seeks dismissal of the case on the basis that Gregory Smoak and Christi Smoak ("Debtor") are \$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 Debtor will be current on or before the hearing on this matter. Unfortunately, counsel's argument of a future cure is not evidence of such.

SEPTEMBER 7, 2016 HEARING

The court continued the matter for Debtor to file a supplemental opposition, which must be supported by competent evidence showing what the Debtor has done with the monies that were not paid to the Trustee and how the Debtors can provide for an arrearage payment of \$2,864.00 and a current monthly payment of \$1,432.00 in light of the financial information provided as to the Debtor's projected disposable income.

DISCUSSION

No supplemental pleadings have been filed, and no admissible evidence has been presented to the court. As discussed in the Civil Minutes from the prior hearing (Dckt. 73), Debtor and counsel were to provide the court with competent, admissible evidence of what the Debtor has done with the monies that were diverted from payment to the Trustee. Though Debtor had their attorney represent to the court that they were current (Debtor failing or refusing to provide a declaration in opposition to the present Motion), they have failed to avail themselves of the opportunity extended by the court.

Though this case is three years old and the court has endeavored to give Debtor and counsel the opportunity to save it, Debtor's failure to take the minimal steps to provide the evidence results in the case being dismissed. Debtor offers no explanation as to how they have multiple amounts of a monthly plan payment that they can pay to the Trustee in just one month. This is contrary to Debtor's financial information provided under penalty of perjury that no such multiples of a payment can exist in any month.

The court's order continuing the hearing expressly required Debtor to provide such information, stating:

"IT IS FURTHER ORDERED that on or before September 28, 2016, Debtor shall file and serve on the Chapter 13 Trustee and U.S. Trustee a supplemental opposition, which must be supported by competent evidence showing what the Debtor has done with the monies which were not paid to the Trustee and how the Debtor can provide for an arrearage payment of \$2,864.00 and a current monthly payment of \$1,432.00 in light of the financial information provided as to the Debtor projected disposable income."

Order, Dckt. 75 (emphasis added).

The Debtor's failure to do so indicates that the prior financial information may not be accurate and that monies have been improperly diverted. Rather than complying with the court's order, Debtor has elected to have their three-year-old case dismissed.

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

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

CASE DISMISSED: 09/09/2016

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 9, 2016).

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

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

56. [16-23671](#)-E-13 ALEKSANDR MOLITVENIK
Pro Se

CONTINUED ORDER TO SHOW CAUSE
- FAILURE TO PAY FEES
7-11-16 [\[21\]](#)

CASE DISMISSED: 09/09/2016

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

The Order to Show Cause was served by the Clerk of the Court on Aleksandr Molitvenik (“Debtor”) and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 22) filed on July 11, 2016. The court computes that 93 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$79.00 due on July 6, 2016).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on September 9, 2016 (Dckt. 41), 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.

57. [16-23671](#)-E-13 ALEKSANDR MOLITVENIK CONTINUED OBJECTION TO
DPC-1 Pro Se CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-19-16 [\[23\]](#)

CASE DISMISSED: 09/09/2016

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

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

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

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

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

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

58. [16-23671](#)-E-13 ALEKSANDR MOLITVENIK CONTINUED MOTION TO DISMISS
DPC-2 Pro Se CASE
7-27-16 [\[27\]](#)

CASE DISMISSED: 09/09/2016

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

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

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

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

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

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

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

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

Debtor has filed an Amended 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. 42, 44. 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).

Debtor appearing to be actively prosecuting this case, the Motion is denied without prejudice.

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

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

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

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

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 Gerard Kearney ("Debtor"), Debtor's Attorney, and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 40) filed on September 19, 2016. The court computes that 23 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 September 12, 2016).

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

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

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

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

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

Final Ruling: No appearance at the October 12, 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 26, 2016. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$10,496.00 delinquent in plan payments (with another \$10,496 coming due before the hearing), which represents one month of the \$10,496.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee asserts that the Debtor is over the secured debt limit, disqualifying the Debtor from Chapter 13 relief. Pursuant to 11 U.S.C. § 109(e), an individual with regular income who owes, on the date of filing of the petition, "noncontingent, liquidated, secured debts" of less than \$1,184,200.00 may be a debtor under Chapter 13. Here, the Debtor owes \$1,532,863.85 in secured debt.

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.

62. 13-31975-E-13 **JACK/LINDA GANAS** **MOTION TO DISMISS CASE**
 DPC-2 **Peter Cianchetta** **9-9-16 [153]**

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.

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 September 9, 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 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 Motion to Dismiss is granted, and the case is dismissed.

The Trustee seeks dismissal of the case on the basis that Jack Ganas and Linda Ganas ("Debtor") are \$7,875.05 delinquent in plan payments (with another \$2,057.03 coming due before the hearing), which represents multiple months of the \$2,057.03 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an opposition on September 28, 2016. Dckt. 162. The Debtor states that they have prepared and filed a new plan along with a Motion to Confirm. They state that the Plan increases the dividend to creditors with unsecured claims to 100%.

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckt. 157, 159. It appears that a question exists whether the Motion states with particularity (Fed. R. Bankr. P. 9013) grounds upon which a plan may be confirmed pursuant to 11 U.S.C. §§ 1329, 1325, and 1322.

In looking at the Declaration, while it appears to provide personal knowledge testimony (Fed. R. Evid. 601, 602), Debtor fails to provide the court with current financial information in this case, which is now three years old. In their Declaration, Debtor appears to disclose that their income has substantially changed, stating, “Jack recently is off work from a work injury and we are able to make the payments until the house sells form (sic) from his work compensation payments and Linda’s income.” Declaration ¶ 6, Dckt. 159. While assuring the court with their personal finding of fact that the plan is feasible, Debtor hides the actual financial information from the court.

While professing a desire to sell their home, the proposed Modified Plan does not provide for the sale, does not set any timing for the sale, and does not set any benchmarks for a sale. Dckt. 160. As written, Debtor has no obligation to sell the property, and if they decide to sell it, they can sell it whenever they want.

While filing a document titled motion, a document titled declaration, and a document titled plan, it does not appear that Debtor is prosecuting any motion and confirmation of a Modified Plan in good faith. Rather, it appears that what is being offered as the defense to the Motion to Dismiss is a Plan that says Debtor will, at some unknown time, sell property, if they so desire. A review of the file discloses that Debtor have not sought to employ a real estate broker to market the property.

Cause exists to dismiss this case.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 9, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Troy Hardin ("Debtor") is \$3,880.00 delinquent in plan payments (with another \$2,180.00 coming due before the hearing), which represents multiple months of the \$2,180.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an opposition on September 28, 2016. Dckt. 94. The Debtor states that he will file, set, serve, and be current under a modified plan prior to the hearing date. Unfortunately for the Debtor, a promise to pay and file a modified plan 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.

64. [16-22677](#)-E-13 **ANDRES SUAREZ**
Richard Jare

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-30-16 [65]

CASE DISMISSED: 09/12/2016

Final Ruling: No appearance at the October 12, 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 Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 66) filed on August 30, 2016. The court computes that 43 days’ notice has been provided.

The court issued an Order to Show Cause based on Debtor’s failure to pay the required fees in this case (\$77.00 due on August 25, 2016).

<p>The Order to Show Cause is discharged as moot.</p>
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The court having dismissed this bankruptcy case by prior order filed on September 12, 2016 (Dckt. 70), 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.

65. [16-22677](#)-E-13 ANDRES SUAREZ
DPC-2 Richard Jare

CONTINUED MOTION TO DISMISS
CASE
7-27-16 [\[49\]](#)

CASE DISMISSED: 09/12/2016

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

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

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

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

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

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

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 7, 2016, Dckt. 65; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 65, 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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 21, 2016. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is delinquent in plan payments by an illegible amount listed on Section 1.01 of the Plan. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

The Debtor has not provided the Trustee with employer payment advices for the period of sixty (60) days 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).

The Trustee also moves to dismiss based on the Debtor's incomplete filings. Debtor's Schedules B, F, I, and J appear to be incomplete. Additionally, Debtor did not complete Sections 1.03 and 2.15 of the Plan, nor did Debtor list an arrearage dividend in Class 1. Debts listed in Debtor's Schedule D are not provided for in the Plan. Finally, Debtor's Form 122C-1 is illegible, and the Trustee is not sure what gross income the debtor attempted to list in Column A.

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 October 12, 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 September 21, 2016, Dckt. 51; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 51, 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 October 12, 2016 hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 5, 2016, Dckt. 78; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 78, 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.

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, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,800.00 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.

SEPTEMBER 7, 2016 HEARING

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

DISCUSSION

The Debtor has not filed a modified plan, nor a response or further opposition, and the Trustee has not filed an Ex Parte Motion to Dismiss. The court interprets that lack of action as meaning that Debtor is delinquent still. 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.

71. [15-26082](#)-E-13
DPC-3

NICHOLAS RIGHTER
Gary Ray Fraley

**MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7 AND/OR
MOTION TO DISMISS CASE**
8-18-16 [\[95\]](#)

Tentative Ruling: No appearance at the October 12, 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 18, 2016. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

The Motion to Convert Case to Chapter 17 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Convert or Dismiss the Chapter 13 Bankruptcy Case is granted, and the case is dismissed, with the court continuing to exercise post-dismissal jurisdiction, including, without limitation, enforcing reinstated transfers that were avoided (11 U.S.C. § 349(b)).

David Cusick ("Movant"), the Chapter 13 Trustee, filed this Motion to Dismiss the Chapter 13 bankruptcy case of Nicholas Righter ("Debtor"). Movant argues 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 a plan for confirmation. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DISCUSSION

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and

the estate.” *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a “totality-of circumstances” test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is one of the enumerated “for cause” grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011) (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999)).

The Trustee reports that he is holding \$6,849.31 in pre-petition monies that are from an avoided pre-petition wage garnishment, which are in excess of the amount in which Debtor claimed an exemption. The court avoided as a preference (11 U.S.C. § 547) the transfer of \$19,242.16 made by Golden 1 pursuant to a pre-petition levy. Order, Dckt. 53.

The court notes that in denying confirmation of the Debtor’s proposed Second Amended Plan that Debtor is an above median-income Debtor with monthly disposable income of \$2,951. Civil Minutes, Dckt. 92. But Debtor proposed to only pay \$957.00 a month into the plan and only for thirty-six months. (There is a clerical error in the Minutes in which it appears to state that the monthly plan payment was “\$9557,” which resulted from the judge’s finger double-hitting the “5” key.)

While Debtor and Debtor’s counsel were given extraordinary leeway in trying to confirm a plan and using monies recovered by the § 547 avoidance, Debtor has failed to fulfill his minimum obligations and duties.

The court rejects the Trustee’s suggestion that conversion of this case to one under Chapter 7 is proper. This over-median-income debtor does not appear to qualify for such relief 11 U.S.C. § 707(b). It also appears to reward Debtor for his failure to prosecute this case in good faith.

Section 349(b)(3) of the Code revests property of the estate in the entity in which such property was vested before the commencement of the case. *See In re Slaughter*, 141 B.R. 661 (Bankr. N.D. Ill. 1992); *In re Sports & Science, Ind., Inc.*, 95 B.R. 745 (Bankr. C.D. Cal. 1989); *In re Mel-O-Gold, Inc.*, 88 B.R. 205 (Bankr. S.D. Iowa 1988); *In re Eden Assocs.*, 13 B.R. 578 (Bankr. S.D.N.Y. 1981). Regardless of whether that property was listed on a schedule, it revests in the entity holding the property immediately before the case commenced. *In re Menk*, 241 B.R. 896 (B.A.P. 9th Cir. 1999). Additionally, that property ceases to be “property of the estate” once it is revested. *In re Searcy*, 313 B.R. 439 (Bankr. W.D. Ark. 2004).

The Code provisions dealing with disposition of undistributed funds by the Trustee if the Chapter 13 debtor is unsuccessful in obtaining confirmation of plan or with what happens to the property of the estate upon dismissal of case unambiguously provide for the return of funds to the debtor, after payment of

administrative expenses, and for revesting of property in the debtor only when there are no post-dismissal intervening events that challenge the debtor's right to receive the funds or to claim the property. See 11 U.S.C. §§ 349(b)(3), 1326(a)(2); *In re Shields*, 431 B.R. 446 (Bankr. S.D. Ind. 2010).

In *Harris v. Viegeln*, ___ U.S. ___, 135 S. Ct. 1829 (2015), the Supreme Court addressed the issue of disposition of plan payments, which had not been disbursed by the Chapter 13 Trustee, when a case is converted to one under Chapter 7. While the post-petition monies paid to the Chapter 13 Trustee by the debtor are property of the estate in the Chapter 13 case, they are not property of the estate in the Chapter 7 case, citing to 11 U.S.C. § 348(f)(1)(A) and (f)(2). *Id.* at 1832. However, because this case is not being converted to one under Chapter 7, the provisions of 11 U.S.C. § 348(f) do not come into play.

In 11 U.S.C. § 1326(a) Congress provides for the treatment of monies paid into a plan. This section provides that the monies paid to the Chapter 13 trustee by the debtor shall be retained by the Chapter 13 trustee until the plan is confirmed, and if not confirmed, returned to the debtor, after paying for allowed administrative expenses under 11 U.S.C. § 503(b). This section includes 11 U.S.C. § 503(b)(1), which provides for “the actual, necessary costs and expenses of preserving the estate” as part of the non-exclusive (*U.S. v. Ledlin (In re Mark Anthony Construction)*, 886 F.2d 1101 (9th Cir. 1989)) listing of administrative expenses under § 503(b). Administrative expenses include liability arising from the conduct of the debtor in possession (or as here, the Chapter 13 debtor fulfilling that role in exercising the power and rights that are property of the estate). *Texas Comptroller of Public Accounts v. Megafoods Stores (In re Megafoods Stores)*, 163 F.3d 1063, 1071–72 (9th Cir. 1998).

Here, exercising the powers of a trustee to avoid a transfer pursuant to 11 U.S.C. § 547, which transfer was preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551, Golden 1 incurred the expense of paying \$19,242.16 to the bankruptcy estate, and acquired the contingent rights arising under 11 U.S.C. § 549(b) to have that money reinstated in the event the bankruptcy case was dismissed. The Chapter 13 Debtor and estate incurred the obligation to pay back the monies on the reinstated transfer upon the dismissal of the bankruptcy case. That obligation arises out of the exercise of the powers of the Chapter 13 debtor (in lieu of a trustee) and rights of the bankruptcy estate.

Congress provides that the dismissal of a bankruptcy case reinstates any transfer avoided under 11 U.S.C. § 547. Thus, dismissal of the case would not only result in the court ordering the Chapter 13 Trustee to return the \$6,849.31 in payment received from the Debtor, but also the Debtor having to return the \$19,242.16 to Golden 1. To avoid a needless “financial waltz” in which the Trustee holds the \$6,849.31 until the Debtor fulfills his obligation to return the \$10,242.16 for the reinstated avoided transfer, the court offsets one post-petition obligation against the other and applies the \$6,849.31 to the Debtor's obligation to the Trustee and Golden 1, and then to the Trustee's obligation to return such funds in the Trustee's possession to Golden 1.

The court orders that the bankruptcy case is dismissed. The Trustee is directed to disburse the \$6,849.31 in monies to Golden 1 to be applied to the reinstated wage garnishment, which was avoided pursuant to 11 U.S.C. § 547.

The court retains all post-dismissal jurisdiction, including enforcing the rights of all persons for whom a transfer was avoided and which is reinstated pursuant to 11 U.S.C. § 349(b) and is to be recovered from the Debtor.

The court shall issue a minute 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 is granted, and the case is dismissed.

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to disburse the \$6,849.31 currently held in the estate to be applied to the avoided transfer (11 U.S.C. § 547) to Golden 1 as a preference, for which Golden 1 paid \$19,242.16 to the Trustee. The avoided transfer is reinstated by operation of law. 11 U.S.C. § 349(b). The \$6,849.31 amount that would otherwise be disbursed to the Debtor is offset against the Debtor's obligation to repay the \$19,242.16 of monies for the reinstated avoided transfer, and the Trustee's payment of said amount to Golden 1 satisfies that portion of the Debtor's obligation under 11 U.S.C. § 349(b) for the reinstated transfer.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 14, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks to dismiss the case on the basis that Derek Wolf ("Debtor") is in material default under the terms of the confirmed Plan, the Plan now requiring 122 months to complete. This is in excess of the sixty-month statutory maximum imposed by 11 U.S.C. § 1322(d). The default was created when a filed secured claim as exceeded the amount scheduled by Debtor by \$7,656.36.

Debtor filed an Opposition on September 27, 2016. Dckt. 44. The Debtor states that he will file, set, serve, and be current under a modified plan before the hearing date. Unfortunately for the Debtor, a promise to perform is not evidence of such.

A review of the docket shows that a modified plan has not been filed. Cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

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

Final Ruling: No appearance at the October 12, 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 31, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,311.45 delinquent in plan payments (with another \$442.93 coming due before the hearing), which represents multiple months of the \$442.93 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.

74. [14-32085](#)-E-13 **PATRICIA MELMS** **MOTION TO DISMISS CASE**
DPC-3 **Mikalah Liviakis** **9-1-16 [77]**

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted and the case is dismissed.
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,581.36 delinquent in plan payments (with another \$2,961.79 coming due before the hearing), which represents multiple months of the \$2,916.79 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.

75. 16-21885-E-13 SUSAN REICHARD CONTINUED MOTION TO DISMISS
DPC-2 Julius Engel CASE
8-11-16 [52]

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on 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. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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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).

SEPTEMBER 7, 2016 HEARING

At the hearing, the Debtor stated an opposition based on desiring to convert this case to one under Chapter 7. The court set the matter for final hearing.

DISCUSSION

No further pleadings have been filed with the court. Cause exists to dismiss the 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 October 12, 2016 hearing is required.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 6, 2016, Dckt. 101; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 101, 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.

77. [16-21089](#)-E-13 STEPHEN MAR MOTION TO DISMISS CASE
DPC-3 Peter Cianchetta 9-14-16 [\[50\]](#)

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on October 4, 2016, Dckt. 62; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 62, 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.

78. [16-22990](#)-E-13 DEMAR RICHARDSON MOTION TO DISMISS CASE
DPC-3 Michael Croddy 8-26-16 [\[22\]](#)

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

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

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 13, 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 Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Rebecca Gage ("Debtor") is \$675.00 delinquent in plan payments (with another \$225.00 coming due before the hearing), which represents multiple months of the \$225.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an opposition on September 28, 2016. Dckt. 110. The Debtor states that she will be current on or before the hearing date. Unfortunately for the Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

80. [16-21392-E-13](#) SCOTT/PAULINE FERTEY
Mary Ellen Terranella

**ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
9-26-16 [\[30\]](#)**

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

The Order to Show Cause was served by the Clerk of the Court on Scott Fertey and Pauline Fertey (“Debtors”), Debtors’ Attorney, Attorney for Shellpoint Mortgage Servicing, Shellpoint Mortgage Servicing, and the Chapter 13 Trustee as stated on the Certificate of Notice (Dckt. 31) on September 26, 2016. The court computes that 16 days’ notice has been provided.

The court issued an Order to Show Cause based on Creditor’s failure to pay the required fees in this case (\$25.00 due on September 12, 2016).

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

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

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

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

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

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

Final Ruling: No appearance at the October 12, 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen (14) days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,990.00 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).

SEPTEMBER 7, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on October 12, 2016.

TRUSTEE'S STATUS REPORT

The Trustee filed a Status Report on September 28, 2016. Dckt. 56. The Trustee states that the Debtor has paid \$995.00 out of \$4,975.00, leaving Debtor delinquent by \$3,980.00 in plan payments. The Trustee notes that Debtor has not filed any opposition to the Motion to Dismiss.

DISCUSSION

No supplemental pleadings have been filed with the court, and Debtor remains delinquent. Cause exists to dismiss this case. The motion is granted, and the case is dismissed.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:30 a.m. on October 12, 2016.

IT IS FURTHER ORDERED that opposition shall be filed and served on or before September 28, 2016.

82.	<u>13-29694</u> -E-13 DPC-2	SINA TOGIAI Matthew DeCaminada	MOTION TO DISMISS CASE 9-1-16 <u>[76]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 1, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Sina Togiai ("Debtor") is \$2,530.00 delinquent in plan payments (with another \$1,265.00 coming due before the hearing), which represents

multiple months of the \$1,265.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed an Opposition on September 27, 2016. Dckt. 80. The Debtor states that she has had to move into an assisted living care facility and her monthly expenses have increased, which hinders her ability to make payments. Debtor is discussing with counsel the possibility of converting the case to one under Chapter 7. Unfortunately for the Debtor, discussing taking action is not equal to taking action.

A review of the docket shows that no Motion to Convert has been filed, and Debtor remains delinquent. 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.