

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

November 4, 2015 at 10:00 a.m.

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| 1. | 15-24500 -E-13 | RAMONA/ROBERT JONES | MOTION TO DISMISS CASE |
| | DPC-4 | Pro Se | 10-7-15 [72] |

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to xxxxx the Motion to Dismiss. |
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David Cusick, the Chapter 13 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).

Ramona Jones and Robert Jones, Jr. ("Debtor") filed a responsive declaration on October 19, 2015. Dckt. 76. Debtor asserts that a Motion to Confirm was filed October 15, 2015. The reason for the delay is that Debtor Ramona Jones' sister passed away 1 month ago, and Debtor Ramona Jones was "heavily medicated and unable to work."

November 4, 2015 at 10:00 a.m.

Trustee filed a response on October 21, 2015. Dckt. 80. Trustee asserts two grounds for rejecting the filed Motion to Confirm and granting Trustee's Motion to Dismiss. First, the Motion to Confirm the Plan is defective in the following ways:

- A. There is no Notice of Hearing filed;
- B. There is no hearing date indicated, and no docket control number;
- C. There is no Declaration in Support of the Motion to Confirm;
- D. There is no Proof of Service of the Motion or Plan in the Court record.

In addition, Trustee asserts that the unconfirmed August 13, 2015 Plan is faulty as to:

- A. § 2.08 understates the mortgage arrears as \$15,517.67, as opposed to the Creditors Proof of Claim #4-1 indicates arrears of \$18,232.63;
- B. § 2.08 also fails to list the monthly dividend to be paid to the mortgage arrears, as the Arrearage Dividend is blank;
- C. § 2.15 does not provide a value for the total unsecured debt and the percentage to pay to unsecured creditors, despite the California Franchise Tax Board's Proof of Claim #3-1 for \$28,997.02 (\$26,028.96 is general unsecured, \$2968.06 is priority);
- D. The Amended Plan has not been served on all parties.

Dckt. 80, 81 ¶ 2, 3.

REVIEW OF CASE AND PRIOR FILINGS

Debtor filed a prior Chapter 7 Case in 2012 in this District - Case No. 12-32011. Debtor received a discharge in that case on November 19, 2012.

The current case was commenced on June 2, 2015. The Schedules and Statement of Financial Affairs were filed on June 15, 2015. Dckt. 15. On Schedule A Debtor lists owning one piece of real property, the 756 Newport Way Property. Debtor states that the encumbrances against the property equal its value. *Id.* at 3. Schedule B lists personal property assets totaling \$12,000.00 (of which \$4,500 is for Debtor's two vehicles, \$4,500 is for household goods, and \$1,000 for books and pictures). *Id.* at 4-6.

On Schedule D, Debtor lists "Owen Loan Servicing" as having a claim of (\$365,921.75), the undescribed collateral to have a value of \$206,000, and the unsecured portion of the creditor's claim to be (\$365,921.75). *Id.* at 8. Debtor lists no priority unsecured claims on Schedule E and no general unsecured claims on Schedule F. *Id.* at 9 and 11.

On Schedule I Debtor lists having gross monthly income of \$5,100.00 (combined of the two debtors). After withholding and including military disability pay, Debtor reports having \$4,273.00 in Monthly Income. *Id.* at 15. On Amended Schedule J Debtor lists having (\$1,912.00) in monthly expenses.

These include the following:

- A. Home Maintenance.....(\$ 100.00)
- B. Utilities.....(\$ 259.00)
- C. Phone/Cable.....(\$ 200.00)
- D. Food and Housekeeping (2 adults).....(\$ 300.00)
- E. Clothing/Laundry.....(\$ 45.00)
- F. Personal Care Products.....(none stated)
- G. Medical/Dental.....(none stated)
- H. Transportation (2 vehicles).....(\$ 100.00)
- I. Entertainment.....(none stated)
- J. Life Insurance.....(none stated)
- K. Health Insurance.....(none stated)
- L. Vehicle Insurance.....(none stated).

Dckt. 55 at 6-7. By Debtor's calculation, there is \$3,269.99 in Monthly Net Income to fund a plan.

As disclosed on Schedule I and the Statement of Financial Affairs, each of the debtors in this case were able to recently obtain employment.

With respect to the expenses stated on Schedule J, they do not appear to be realistic or reasonable. Here, assuming \$50 a month for housekeeping expenses, each debtor would have \$125 a month for food, which works out to \$1.34 per meal. For two vehicles, Debtor provides \$50 a month for fuel, maintenance, and registration. There is no expense for insurance for the two vehicles.

Review of Plan

The Amended Chapter 13 Plan was filed on August 13, 2015. The terms of the Plan provide:

- A. Monthly Plan Payment, 60 Months.....\$1,192.97
- B. Ocwen, \$15,517.67 Arrearage.....(none provided)
- C. Ocwen, Current Monthly.....(\$ 908.99)

Dckt. 43.

The Amended Plan fails to provide for the curing of the arrearage on the "Ocwen Loan Servicing" claim. The court notes that Ocwen Loan Servicing, LLC is a loan servicing company and generally not the creditor who is asserting

the claim in the bankruptcy case.

Claims Filed

Several claims have been filed in this case. Proof of Claim No. 1 has been filed for Cascade Capital LLC Series B in the amount of \$315.00 as an unsecured claim. This date appears to pre-date July 2012 and may be subject to the prior discharge. No supporting documents for the claim are attached to Proof of Claim No. 1.

Proof of Claim No. 2 has been filed by the California Franchise Tax Board. The claim is filed for a \$2,968.06 priority claim and a \$26,028.96 general unsecured claim. The Attachment to Proof of Claim No. 2 identifies the claim to be for the 2004-2011 tax years, and for the 2012-2014 tax years, with the asserted tax for this later period to be the priority claim of \$2,968.06 and unsecured claim for \$742.00 (with the 2014 tax year "TBD.").

Proof of Claim No. 4 has been filed for U.S. Bank, N.A., as Trustee, by Ocwen Loan Servicing, LLC (as the loan servicer). The Claim asserts that there is: (1) an \$18,232.63 pre-petition arrearage; (2) \$279,000 secured claim; and (3) \$89,360.45 unsecured claim.

Motion to Confirm and Supporting Pleadings

On October 19, 2015, Debtor filed a pleading titled "Motion to Confirm Chapter 13 Plan. Dckt. 78. The Motion fails to state with particularity the grounds upon which relief is requested. Fed. R. Bankr. P. 9013. Even giving the "Motion" a very liberal, *pro se* lenient eye, the "Motion" states little more than a bankruptcy case was filed, a plan filed, and confirm the plan. No certificate of service has been filed for the Motion.

No declaration or other evidence is filed to support confirmation. Debtor has filed a notice of hearing. Dckt. 84. The certificate of service for the Notice states that it has only been served on the Chapter 13 Trustee and Brian Tran, as the attorney for Ocwen Loan Servicing, LLC. The Notice (as well as the Plan and Motion) have not been served on U.S. Bank, N.A., as Trustee, (a federally insured financial institution) and the State of California Franchise Tax Board.

DISCUSSION

The present Plan fails to properly provide for the claims in this case - both the secured claim of U.S. Bank, N.A., the priority claim and general unsecured claim of the California Franchise Tax Board. On the one hand, it would appear that Debtor is not able to feasibly prosecute a Chapter 13 Plan in this case.

Looking below the surface, it may well be that Debtor, having been unemployed, fell behind on the mortgage payments. Both of the debtors now have jobs and are earning a good monthly income. They may be able to payment their current expenses and cure the arrearage, as well as provide for the priority tax claim. Further, it appears that U.S. Bank, N.A., as Trustee, values the Property securing its claim to be only \$279,000.00. Proof of Claim No. 4. Debtor may not want to try and cure the arrearage, but let the Property go and start anew.

It does appear to the court that whatever Debtor should decide to do, prosecuting this case in pro se does not appear to be feasible. If the only debts are the secured claim and priority claim, a possible financial scenario could be:

| | Estimated Monthly Creditor/Administrative Expense Payment |
|--|---|
| Cure of \$18,232.63 Secured Claim Arrearage Over 60 Months | (\$304) |
| Current Monthly Secured Claim Payment | (\$909) |
| \$2,869.00 Priority Claim Over 60 Months 1261 | (\$48) |
| Chapter 13 Trustee Administrative Expense - 8% of Plan Payment | (\$101) |
| Debtor Chapter 13 Attorney Fee Administrative Expense of \$3,500 in Fees Paid Through Plan Averaged Over 60 Months | (\$59) |
| | |
| Guesstimated Plan Payment For Above Claims and Expenses | \$1,421 |

As set forth on Amended Schedule J, Debtor reports having Monthly Income (after withholdings) of \$4,273.00. If there are (\$1,421.00) in monthly plan payments for secured (current and cure) and priority claims, then there would be \$2,852 for current reasonable monthly expenses and any additional plan amounts which would be required.

At the hearing the court addressed with Debtor the ability of Debtor to seek out and obtain counsel so that this case, and a possible plan, could be reasonably and feasibly prosecuted. ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

The Motion to Confirm and Plan being facially deficient, 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 ~~xxxxxxx~~.

2. [15-20001-E-13](#) JOSE/ESMERALDA GIL
DPC-2 Scott Hughes

MOTION TO DISMISS CASE
10-7-15 [[46](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 46.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,332.00 delinquent in plan payments, which represents multiple months of the \$2,522.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

3. [15-24401](#)-E-13 CINDY GRAHAM
DPC-1 Scott Johnson

MOTION TO DISMISS CASE
10-7-15 [[35](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 35. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Cindy Graham ("Debtor") filed opposition on October 8, 2015. Dckt. 39. Debtor promises to file a Second Amended Plan on or before the hearing. No evidence was filed in opposition to the Motion. The specific grounds stated in the Opposition was that Debtor's counsel had already prepared as was sending on October 8, 2015, the plan to Debtor to review on sign.

The court's review of the Docket on October 30, 2015, twenty-two days later, shows that no amended plan, motion to confirm amended plan, supporting pleadings, and notice of hearing had been filed and served. This is Debtor's second recent bankruptcy case. The first Chapter 13 Case having been filed on June 12, 2014, and dismissed on December 19, 2014. Case No. 14-26236. Debtor was represented in the prior bankruptcy case by the same counsel as she is

represented in the current case.

Debtor confirmed a Chapter 13 Plan in the First Bankruptcy Case on October 15, 2014. 14-26236; Order, Dckt. 39. On October 29, 2014, the Chapter 13 Trustee filed a Notice of Default stating that Debtor was delinquent in the amount of \$1,526.40 for the October 25, 2014 plan payment. *Id.*, Dckt. 40. Debtor did not cure the default, and the case was dismissed.

Debtor, with the assistance of counsel, filed the present case on May 29, 2015, five months after dismissal of the First Bankruptcy Case. The court confirmed Debtor's Original Chapter 13 Plan in the current case on July 28, 2015. Dckt. 18. That Plan required payments of \$1,030.00 a month. Plan, Dckt. 5.

Fourteen days after the order confirming the Original Chapter 13 Plan was docketed, Debtor filed on August 11, 2015, a Modified Plan and motion to confirm the modified plan. The reason for the abrupt modification was that Debtor was now electing to surrender the Gibson Drive Property and to litigate the Internal Revenue Service claim amount. Motion, Dckt. 20.

In denying the motion to confirm the Modified Plan, the court found that in addition to Debtor being \$225.00 delinquent in plan payments, Debtor also had failed to account for the reduced expenses in choosing to surrender the Gibson Drive property and allow the creditor to foreclose. Civil Minutes, Dckt. 32.

The Trustee seeks dismissal of the case on the basis that the Debtor is now \$2,640.00 delinquent in plan payments, which represents multiple months of the \$1,030.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, this Debtor has been attempting to propose, confirm, and perform a Chapter 13 Plan for seventeen months. Debtor has been unsuccessful. In comparing the proofs of claim filed by PNC Bank, N.A. in the prior case and the current case, the arrearage on this claim has grown from \$2,012.15 (14-26236, Proof of Claim No. 20) to \$6,384.48 (Proof of Claim No. 12). The stated monthly payment amount is \$447.42 (Principal, Interest, & Escrow; *Id.*).

Debtor has not diligently prosecute this bankruptcy case. Debtor is not prosecuting a feasible plan.

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

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

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

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

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

4. [15-26202](#)-E-13 ROSE RODRIGUEZ

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-8-15 [[29](#)]

DEBTOR DISMISSED: 10/15/2015

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rose Rodriguez ("Debtor") and Trustee as stated on the Certificate of Service on October 18, 2015. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay one or more installments according to the schedule specified in the order.

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on October 15, 2015 (Dckt. 39), 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.

5. [15-20204-E-13](#) TIMOTHY/JENNIFER VINCENT MOTION TO DISMISS CASE
DPC-1 Justin Kuney 10-7-15 [[23](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 23. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Debtor filed a response on October 21, 2015. Dckt. 27. Debtor merely promises to "present evidence that the default in plan payments has been cured or that a Modified Plan and Motion to Confirm has been filed." *Id.*

A promise to cure a delinquency or file a Modified Plan does not cure the delinquency. To date, the Debtor has not filed a proposed modified plan nor a Motion to Confirm.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,711.00 delinquent in plan payments, which represents multiple months of the \$2,939.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

holding that:

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

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

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

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| 6. | <u>14-29505-E-13</u> JOHN/CAROLIN FUNDERBURG DPC-1 Diana Cavanaugh | MOTION TO DISMISS CASE 10-7-15 [<u>53</u>] |
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Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

7. [15-27005](#)-E-13 MICHELLE CAMPAU
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-9-15 [[23](#)]

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 Michelle Campau ("Debtor"), Debtor's attorney, and Trustee on October 9, 2015. 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 October 5, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not 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 sustained, no other sanctions are issued pursuant thereto, and the case is dismissed.

8. [12-37606-E-13](#) SCOTT WILLIAMS MOTION TO DISMISS CASE
DPC-1 Sally Gonzales 10-7-15 [[43](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

9. [12-21207-E-13](#) JIM LEDESMA MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 10-7-15 [[83](#)]

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to xxxxxxx the Motion to Dismiss. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 83. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Jim Ledesma ("Debtor") filed an opposition on October 21, 2015. Dckt. 87. Debtor merely promises to cure the delinquency on or before the hearing date. The court notes that the opposition was filed by Peter Macaluso, "on behalf of C. Anthony Hughes," the attorney of record for the Debtor. To date, no order substituting Mr. Macaluso in for Debtor's attorney of record has been issued.

Unfortunately, the Debtor has failed to provide evidence that the delinquency has been cured.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,789.30 delinquent in plan payments, which represents multiple months of the \$1,894.65 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

While stating that Debtor will cure the default, the Opposition is silent on how the Debtor has an extra \$3,789.30 to cure the default, in addition to making the current monthly payment of \$1,894.65. The information provided under penalty of perjury by Debtor is that he has only \$1,894.65 of Monthly Net Income to fund a Chapter 13 Plan. Amended Schedule J, Dckt. 41; and Declaration, Dckt. 44.

Debtor has demonstrated that while he would desire to cure such a large amount, it is financially impossible. Given that Debtor has only \$3,960.20 in monthly income, coming up with \$5,683.95 in one month to cure the arrearage and current monthly plan payment cannot occur based on the information provided under penalty of perjury.

On November 2, 2015, the Trustee filed a Notice of Withdrawal of the instant Motion. Dckt. 94. The Notice merely states that the Debtor filed and set for hearing a modified plan. The Trustee's Notice does not provide an explanation on where, why, and how the Debtor found the necessary funds to cure the delinquency.

At the hearing, **xxxxxx**

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

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

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

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

10. [11-28609](#)-E-13 DOUGLAS/JENNIFER LUSK MOTION TO DISMISS CASE
DPC-2 Brian Turner 10-7-15 [[55](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

11. [13-22710](#)-E-13 MOHAMMAD ATEBAR MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 10-7-15 [[70](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

12. [13-24610](#)-E-13 DAX/TINA CHAVEZ
DPC-3 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[36](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

13. [15-20810-E-13](#) VASILIIY/YELENA KUMANSKIY MOTION TO DISMISS CASE
DPC-2 Mitchell Abdallah 10-7-15 [[87](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The court's decision is to continue the Motion to Dismiss to 3:00 p.m. on November 24, 2015. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 87. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 25, 2015. Dckt. 86.

Debtor filed an opposition on October 20, 2015. Dckt. 102. Debtor declares that a Third Amended Plan was filed and served on October 8, 2015 to address "unexpected changes in my month-to-month finances, secured debt delinquency, and unsecured debts." *Id.* at ¶ 3. The delay in filing was due to the "need to verify our current disposable income. We were required by the court to provide verification of charitable donations, expenditures for child's college expenses, and rental property expenses." *Id.* at ¶ 7. Finally Debtor filed an Amended Schedule J and Amended Summary of Schedules. Dckt. 95, 96.

A review of the proposed modified plan and accompanying Motion to Confirm appears to facially comply with 11 U.S.C. §§ 1322, 1323, and 1325. Due to the Trustee's Motion being based on the Debtor's failure to confirm a plan after the prior plan was denied, the court continues the instant Motion to 3:00 p.m. on November 24, 2015.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued

to 3:00 p.m. on November 24, 2015.

14. [15-23710](#)-E-13 JENNIFER MUELLER
DPC-1

MOTION TO DISMISS CASE
10-7-15 [[49](#)]

DEBTOR DISMISSED: 10/19/2015

Final Ruling: No appearance at the November 4, 2015 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.

15. [15-26710](#)-E-13 ROBERTO RAMIREZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-29-15 [[42](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Roberto Ramirez ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 30, 2015. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on September 24, 2015).

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

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

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

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

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

16. 11-26411-E-13 JACK MCKARSON MOTION TO DISMISS CASE
DPC-3 Peter Macaluso 10-7-15 [145]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

17. [12-37912-E-13](#) KENT/RHIANNA SNOW
DPC-5 Edward Smith

MOTION TO DISMISS CASE
10-7-15 [[40](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 40.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,280.50 delinquent in plan payments, which represents multiple months of the \$2,187.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

18. [15-26412-E-13](#) NICHOLAS/SAMANTHA BAKER MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 10-7-15 [[36](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 36.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$466.00 delinquent in plan payments, which represents multiple months of the \$476.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

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

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

19. [14-23115](#)-E-13 ARLENE THIGPEN MOTION TO DISMISS CASE
DPC-2 Seth Hanson 10-7-15 [[24](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 24.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$10,871.50 delinquent in plan payments, which represents multiple months of the \$3,875.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor failed to respond to the instant Motion.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

November 4, 2015 at 10:00 a.m.

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. [10-46317](#)-E-13 ROBERTO/MELISSA REGALA MOTION TO DISMISS CASE
DPC-1 Mark Wolff 10-7-15 [[85](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

21. [12-34521](#)-E-13 MARC MILLIGAN AND ANGELA MOTION TO DISMISS CASE
DPC-1 MCCOLLOUGH 10-7-15 [[23](#)]
James Keenan

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

22. [15-21423](#)-E-13 ELINA MACHADO
DPC-1 Muoi Chea

MOTION TO DISMISS CASE
10-7-15 [[45](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

23. [11-48227-E-13](#) CHERYL WATTS
DPC-1 Candace Brooks

MOTION TO DISMISS CASE
10-7-15 [[35](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 35. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Cheryl Watts ("Debtor") filed a response on October 21, 2015. Dckt. 39. Debtor explains the delinquency as a result of "having to take some time off from work as a result of her father suffering a stroke [and] Debtor's vehicle needed repairs to the transmission." Dckt. 40 ¶ 3, 5, 7. Debtor plans to cure the delinquency by filing a Modified Plan.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,122.49 delinquent in plan payments, which represents multiple months of the \$1,706.07 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

A review of the court's docket shows that no Modified Plan has been filed. Debtor has not cured the delinquency, so cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

24. [12-37428-E-13](#) DREW/LORETTA ODABASHIAN MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 5-19-15 [[37](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 37. The Trustee sought dismissal of the case on the basis that the Debtor is \$850.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. This court dismissed the case on June 29, 2015. Dckt. 43. That Order was vacated on October 13, 2015, and the Trustee's Motion to Dismiss was rescheduled to be heard on November 4, 2015, at 10:00 a.m. Dckt. 62, 64.

Debtor filed an opposition on October 20, 2015. Dckt. 67. FN.1.

FN.1. The court notes that the October 13, 2015 Order to Reschedule the Motion to Dismiss had the following order language:

IT IS FURTHER ORDERED that opposition, if any, to the Motion shall be filed and served on or before October 19, 2015. Any opposition shall be supported by credible, properly authenticated evidence. The Opposition shall expressly address the financial ability of Debtor to perform and the sources of any monies used, or to be used, to cure the monetary defaults in this bankruptcy case. Replies to the Opposition shall be filed and served on or before October 26, 2015.

Dckt. 64.

The Opposition filed by Debtor was not timely as required by the prior order of the court. The Opposition states, that:

Due to a calendaring error, the answer to the Motion to Dismiss is being filed late. Counsel for Debtors respectfully requests that the answer be considered timely and the Motion to Dismiss be heard without penalty for the late response.

Dckt. 67.

Because of the unusual circumstances of this case, the court will sua sponte waive the timeliness defect.

Debtor asserts the following in the opposition to the Motion to Dismiss this Chapter 13 case:

Debtors respond and state that they had the funds available to remit each missed payment and at the original Motion to Dismiss, they were only one payment behind.

In an effort to retain their vehicle, Debtors remitted payments directly to Wells Fargo Dealer Services for four months June, July, August, and September, in addition to remitting the difference in Plan payments to Counsel directly. Counsel has since sent the monies to the Trustee and the funds

have been applied to their Plan.

Counsel for Debtor is waiting for confirmation that Wells Fargo Dealer Services received the sum of \$1,262.12 directly.

Debtors are now technically current, but a Stipulation will need to be signed and filed with Wells Fargo Dealer Services, Debtors and the Trustee to account for the direct payments to the Class 2 claim of Wells Fargo Dealer Services.

Dckt. 67, p. 1, 2 (references to evidence omitted). A review of the court's docket shows no stipulation has been filed.

Debtor failed to present authentic evidence that "expressly address[es] the financial ability of Debtor to perform and the sources of any monies used, or to be used, to cure the monetary defaults in this bankruptcy case." Instead, the Debtor states what they will do rather than providing evidence that the evidence has been cured.

The exhibit provided by the Debtor is an unauthenticated copy of the Debtor's payment history on the Trustee's website. The exhibit shows that the Debtor is still delinquent in the amount of \$1,262.12. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The "Opposition" is troubling in that it does not address the reason for the default and why Debtor elected not to perform the Plan. The Opposition states that Debtor had the money to make the plan payments, but elected not to make the payments. Instead, they chose to pay Wells Fargo Bank, N.A. directly (apparently because they preferred to pay only the Bank), and then had their attorney hold what would have been the remaining amount of the plan payment. Debtor chose not to make the payment to the Trustee. They did this with the knowledge, and assistance, of their attorney.

Debtor's most recent declaration states that they could not make the payment because their business revenues had declined. Declaration, p. 2:9-13; Dckt. 68. Debtor also testifies that the business has not improved. *Id.*, p. 2:5-8. Because of the lack of money, Debtor made the decision to default in the plan and pay the creditors which they preferred.

The exact statements of Debtor are:

"4. We are small business owners and our Corvette parts business is tied directly to the strength of the economy and business has not improved since the filing of our Chapter 13 case.

5. We fell behind in our payments to the Trustee because of a decline in sales. We had to choose whether to pay the Trustee or make our mortgage payment. Since our home and the business are on the same property, we had to pay the mortgage or risk losing our home and our business..."

Declaration, Dckt. 13.

Debtor continues in the declaration to blame their two prior attorneys for failing to communicate with or act for Debtor. Debtor actually had two different law firms purporting to represent Debtor. Debtor does not explain how any such failure to communicate or act for Debtor ameliorates Debtor's lack of monies to make the plan payments.

Debtor does not provide any explanation as to how they can perform going forward or what they intend to do in this bankruptcy case. They just say that their business is not producing enough money to make the payments. Merely because the current (third) counsel states in the Opposition that he has told Debtor that the plan payments must be made is not evidence that the Plan is feasible or that Debtor can make the plan payments.

The court does not find the testimony sufficient to allow this case to proceed. The Declaration carefully avoids providing any current financial information or make any showing that Debtor can actually perform the Plan, or any plan, if the case were allowed to proceed. Debtor also fails to provide any testimony as to what they intend to do in this case if it is not dismissed.

Therefore, based on the Debtor's delinquency, the prior defaults, Debtor's election to make payments contrary to the Plan directly to the creditors they chose to prefer, and no evidence of Debtor's current finances, 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.

25. [15-26328](#)-E-13 GUADALUPE MARTINEZ
Pro se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-30-15 [[33](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Guadalupe Martinez ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on October 2, 2015. The court computes that 33 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay filing fee for filing amended schedule F.

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| The Order to Show Cause is discharged as moot. |
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The court having dismissed this bankruptcy case by prior order filed on October 19, 2015 (Dckt. 37), 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.

26. [13-35629](#)-E-13 MARCIE ZAHOUREK
DPC-3 Scott Johnson

CONTINUED MOTION TO DISMISS
CASE
9-16-15 [[55](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

27. [15-23930](#)-E-13 CHRISTOPHER/GAIL BROWN MOTION TO DISMISS CASE
DPC-2 Mohammad Mokarram 10-7-15 [[43](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 43. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Debtor filed a response on October 21, 2015. Dckt. 47. Debtor declares that, as a carpet cleaning business owner, the delinquency was created by "some customer payments." Dckt. 48 ¶ 3.

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

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

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

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

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

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

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

28. [11-44232-E-13](#) SANDRA TODD CONTINUED MOTION TO DISMISS
DPC-1 Peter Macaluso CASE
7-31-15 [[67](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 31, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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| The court's decision is grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 31, 2015. Dckt. 67. The Trustee seeks dismissal on the ground that the Debtor is delinquent.

DEBTOR'S OPPOSITION

The Debtor filed an opposition on August 25, 2015. Dckt. 72. The Debtor requests a 30 day continuance because there is a Substitution of Attorney pending and that additional time to analyze and determine if an amended plan is required.

SEPTEMBER 22, 2015 HEARING

The court continued the hearing to 10:00 a.m. on November 4, 2015 to afford C. Anthony Hughes, Debtor's counsel of record, to represent his client or assist his client in completing a substitution of counsel with Peter Macaluso. Dckt. 80.

DISCUSSION

On October 6, 2015, the court signed an order approving the substitution of attorney for Debtor, substituting Peter Macaluso in as the attorney of record. Dckt. 83.

However, no supplemental papers have been filed by the Debtor in connection with the instant Motion nor has the Debtor filed a proposed modified plan.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,098.30 delinquent in plan payments, which represents multiple months of the \$323.53 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has provided financial information under penalty of perjury that she has only \$323.53 on Monthly Net Income to fund a Plan. Amended Schedule J, Dckt. 47. It is a financial impossibility that Debtor could have enough money to make a payment of the three arrearage payments and the current monthly payment (which aggregate \$1,421.83) in one month.

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

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

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

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

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

29. [13-20433](#)-E-13 DONALD HANKS
DPC-1 Lucas Garcia

MOTION TO DISMISS CASE
10-7-15 [[27](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 27.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,736.12 delinquent in plan payments, which represents multiple months of the \$1,868.06 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel,
and good cause appearing,

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

30. [12-28434-E-13](#) JOHN/KARIN WESCOM MOTION TO DISMISS CASE
DPC-5 Richard Chan 10-7-15 [[64](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

31. [13-32434](#)-E-13 ONA JOHNSON
DPC-1 Steele Lanphier

MOTION TO DISMISS CASE
10-7-15 [[45](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 45.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

32. [14-20934-E-13](#) CANDIDA FUCHS
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[19](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 19. The Trustee seeks dismissal due to Debtor's delinquency in plan payments.

Debtor filed an opposition on October 21, 2015. Dckt. 23. Debtor promises to review the case, sign a substitution of attorney, prepare, sign, and file a Modified Plan on or before the hearing.

The opposition was filed by Peter Macaluso. To date no substitution has been entered and C. Anthony Hughes.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,620.00 delinquent in plan payments, which represents multiple months of the \$540.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee reports that the Debtor has paid a total of \$9,180.00 into the plan to date. A review of the confirmed plan shows that the monthly plan

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payment of \$540.00 is going to pay two vehicle payments, with the remaining to go to administrative expenses, attorney's fees, and 1.56% minimum dividend to unsecured. With the case being a little over a year and half in and the plan only providing payment to the two vehicle payments, there would be no prejudice to the Debtor, who can refile a new case, in dismissing the case.

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

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

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

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

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

33. [15-20335](#)-E-13 MARK/GINALYN CHANG MOTION TO DISMISS CASE
DPC-2 Matthew Eason 10-7-15 [[34](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 34.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,138.05 delinquent in plan payments, which represents multiple months of the \$2,138.05 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 87. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

The Debtor filed an opposition to the instant Motion on October 28, 2015. Dckt. 91. FN.1. The Debtor states that she intends to pay the delinquency before the hearing.

FN.1. The court notes that the Debtor's opposition is untimely. Pursuant to Local Bankr. R. 9014-1(f)(1), written opposition was due 14 days prior to the hearing - here, being October 21, 2015. The court *sua sponte* waives the defect, but counsel should be cognizant that the court will not waive such defects in the future.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$970.00 delinquent in plan payments, which represents multiple months of the \$485.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately, the Debtor does not provide evidence that the delinquency has been cured. Instead, the Debtor promises to have paid by the time of the hearing. This is insufficient.

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

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

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

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

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

35. [12-23340](#)-E-13 DERRICK RISKE
DPC-2 Mark Briden

MOTION TO DISMISS CASE
10-7-15 [[56](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 56. The basis for Trustee's Motion is that Debtor failed to make the final, lump sum payment called for under the Modified

Plan.

On July 17, 2015, Trustee filed a Motion to Modify the Plan, altering the terms from monthly payments of \$100.00 for 60 months to payments of \$100.00 for 41 months and a lump sum of \$50,015.00 in the 42nd month. Dckt. 50. The Motion was approved by the court on September 3, 2015. Dckt. 54. Trustee declares that Debtor failed to make the final lump sum payment. Dckt. 58.

Debtor filed a Motion to Dismiss on October 7, 2015, requesting this court to dismiss the case without prejudice. Dckt. 60.

Debtor having filed a Motion to Dismiss demonstrates consent to Trustee's request for dismissal. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Thus, the motion is granted and the case is dismissed.

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

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

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

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

36. [14-23440](#)-E-13 TOSHIBA FRANCOIS
DPC-2

MOTION TO DISMISS CASE
10-7-15 [[38](#)]

Withdrawn by Trustee 10/16/15 - Dckt. 42

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

37. [15-25641](#)-E-13 FRANK DAVIS
George Burke

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-19-15 [[21](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Frank Davis ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on October 21, 2015. The court computes that 14 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 14, 2015).

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

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

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

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

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

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

38. [12-32244-E-13](#) SHANE/YAMILETH SHANNON
DPC-8 Richard Chan

MOTION TO DISMISS CASE
10-7-15 [[72](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 72.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,100.00 delinquent in plan payments, which represents multiple months of the \$3,070.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

39. [14-29944-E-13](#) GLADYS ROXAS
DPC-1 Richard Jare

MOTION TO DISMISS CASE
10-7-15 [[27](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| <p>The court's decision is to grant the Motion to Dismiss and dismiss the case.</p> |
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$120.00 delinquent in plan payments, which represents multiple months of the \$60.00 plan payment.

Debtor filed a response on October 21, 2015. Dckt. 31. Debtor declares that Debtor is current, and the September 25th payment was sent on or around October 2nd. Debtor attached a copy of the money order as Exhibit A.

A review of Trustee's evidence shows that Debtor missed a payment for May 2015 of \$60.00. Dckt. 7, 27. In other words, Debtor's plan has been filed since October 2014, which means the 11th payment was due in September 2015 (4 payments of \$20.00, 7 payments of \$60.00.). Trustee's table shows 10 payments as of September 2015.

Even taking Debtor's evidence of one additional payment as true, Debtor is short by one payment of \$60.00. Thus, Debtor is delinquent, and failure to

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- Page 47 of 106 -

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

Debtor has confirmed a Plan in this case which required only \$20 a month payments for the first four months and then thirty-two payments of \$60 a month. Plan, Dckt. 7. The Plan was confirmed without a hearing because no creditor or the Chapter 13 Trustee did not object to confirmation. The Chapter 13 Plan provides for:

- A. No Class 1 Claims.
- B. No Class 2 Claims.
- C. No Class 3 Claims.
- D. No Class 5 Claims.
- E. No Class 6 Claims.
- F. A 0.00% dividend for the Class 7 General Unsecured Claims.

Id.

The only person to be paid through the Plan is Debtor's counsel, the sum of \$1,900.00. This Chapter 13 case exists for no reason other than to pay Debtor's counsel fees for filing the Chapter 13 case. There is no reorganizing of Debtor's finances, but merely a disguised no-asset Chapter 7 case.

On Schedule I, Debtor lists \$200 in gifts from daughter and \$844 of her mother's Social Security benefits to create the appearance that Debtor could perform a Chapter 13 Plan. Dckt. 1 at 23-24. To create the appearance that Debtor has \$60 a month to fund a plan that only pays her attorney, Debtor states under penalty of perjury that for three persons: (1) food and housekeeping expenses are only \$417, and (2) transportation for a vehicle is only \$165. Schedule J, *Id.* at 25-26.

The falsity of the expenses is shown by Debtor having defaulted \$120 in payments. Debtor admits in the Opposition that she could not timely make the September payment. Even though the payments to fund a plan that exists solely to pay Debtor's attorney, the history of payments show that Debtor consistently runs late in payments.

Debtor argues that she is not in default because the total of late payments should equal what should have been timely paid. Debtor states that the first minimal \$20.00 payment was due on November 25, 2014, with four \$20.00 payments due, and then thirty-two \$60.00 payments. Opposition, p. 1:21-23. Debtor argues that if the total payments (irrespective of when they were paid) should equal the total payments to be made under the plan.

As requested by Debtor, the court reviews the plan payment table stated in the Trustee's Motion. It shows that the Debtor is unable, or unwilling, to timely make the very, very small monthly plan payments, which are made solely for the purpose of paying Debtor's counsel for putting Debtor through thirty-six months of Chapter 13 rehabilitation (reorganization) when there are no finances to be reorganized - no mortgage default cured, no junior lien

stripped, no asset saved from restructuring secured debt, no high interest car loan restructured, no non-dischargeable debt restructured and repaid without further interest or penalty, or no over median-income debtor making some payment to creditors holding general unsecured claims to obtain the discharge of a substantial portion of the unsecured debt.

A review of Debtor's Petition, Schedules and Statement of Financial Affairs discloses the following:

- A. The only prior bankruptcy case in the eight years preceding this case was filed by Debtor in 2007, on October 4, 2007. 07-28199. In that Chapter 7 case Debtor and her spouse obtained a discharge. That case was closed on February 6, 2008 - six years and nine months before the filing of the current case by Debtor. Petition, Dckt. 1.
- B. Debtor has no interests in any real property. Schedule A, *Id.* at 9.
- C. Debtor's personal property assets consists of:
 - 1. Cash.....\$ 10.00
 - 2. Bank Account.....none of Debtor's money in account
 - 3. Household Goods...many belong to daughter
 - 4. Clothing.....\$ 250.00
 - 5. Misc. Jewelry.....\$ 150.00
 - 6. Calpers.....\$5,000.00
 - 7. Auto.....equitable ownership, brother's car
 - 8. Auto.....co-signed daughter's car loan

Schedule B, *Id.* at 11-13.

- D. For secured claims:
 - 1. Co-signed loan for daughter's car
 - 2. Executory contract for equitable interest in brother's car

Schedule D, *Id.* at 15.

- E. No creditors with priority unsecured claims. Schedule E, *Id.* at 16.
- F. \$14,190.00 of general unsecured claims. Schedule F, *Id.* at 17-20.
- G. Debtor's monthly gross income as a payroll specialist for the State is \$2,691. After all of the required deductions, Debtor's take-home pay is \$1,795.71. Schedule I, *Id.* at 24. Schedule I and J show that Debtor is having to use her Mother's social security money and gifts from her daughter to make the expenses listed on Schedule J.
- H. On Schedule J Debtor lists expenses of \$3,129.71 a month for herself, her teenage son, and apparently her mother. Of this,

\$1,500 is for the mortgage/rent. Schedule J, *Id.* at 26. Schedule J states that the projected disposable income was reduced to \$20 for the first four months and the clothing expense was reduced so Debtor could pay the filing fee installments.

- I. The Statement of Financial Affairs shows that the Debtor's income in 2013 was \$15,999, working for the State of California. For 2012, Debtor had no income, stating that she was not employed. Statement of Financial Affairs Question 1, *Id.* at 28.
- J. Additional income for 2012 and 2013 is stated to be Foodstamps and cash aid. Statement of Financial Affairs Question 2, *Id.* at 29.
- K. While Debtor states she is married, she provides no information about his location, income, or assets for the case and bankruptcy plan. Statement of Financial Affairs Question 1, *Id.* at 32;
- L. The Debtor is a below median income debtor. Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, *Id.* at 41-43.

The Objection of the Trustee and Response of Debtor raise several concerns for the court. On the one hand, this case appears to be nothing more than an attorney fee Chapter 13 case in which the Debtor derives no benefit.

Debtor has no assets to "save" in a Chapter 13. Debtor has no nondischargeable debt to be "managed." Debtor is not only under median income, but has so little money that she can afford to make a plan payment which is of no meaningful consequence to anyone (other than possibly Debtor's attorney).

On the other hand, it could be that the Debtor is attempting to circumvent the mandate of Congress that a debtor cannot obtain two Chapter 7 discharges when the second Chapter 7 case is commenced within eight years of the prior case in which the Chapter seven discharge was entered. 11 U.S.C. § 727(a)(8). In *re Paley*, 390 B.R. 53 (Bankr. N.D. NY 2008) (concluding that a Chapter 13 case in which the "rehabilitation" is only payment of debtor's attorneys fees so as to circumvent 11 U.S.C. § 727(a)(8) is not in good faith). The court considers the totality of the circumstances in making a good faith determination. *Goeb v. Heid (In re Goeb)*, 675 F.2d 1386 (9th Cir. 1982).

Debtor's prior case in which she was granted a discharge was filed on October 4, 2007. The eight year period barring another Chapter 7 discharge expired on October 3, 2015. Debtor chose to file the present Chapter 13 case on October 5, 2014, one year before the 11 U.S.C. § 727(a)(8) prohibition would expire.

The Statement of Financial Affairs does not identify any pending litigation, but makes reference to a \$260 bank account levy in 2013 (approximately one year before the current bankruptcy case was filed). Statement of Financial Affairs Question 4, Dckt. 1 at 29. It may be that Debtor wanted to obtain an early second discharge to preempt litigation rather than address new debt which arose after the receiving the prior discharge or

asserting her exemptions against enforcement of such claims.

The Trustee's Motion is based on the Debtor's chronic defaults on the minor plan payments. This has brought to the court's attention this Debtor being subjected to 1,095-plus days of bankruptcy rather than a 120-day Chapter 7 case. The chronic defaults may be a lifesaver thrown to the Debtor, this case now being brought to the court's attention.

Cause exists to dismiss this case. The motion is granted and the case is dismissed. Debtor can seek the assistance of counsel to determine whether the filing of a new bankruptcy case, now more than eight years after the prior case in which the Chapter 7 discharge was granted, is in her best interests. Given the very modest amount of debt, and Debtor now having employment, expending a second discharge may not be wise.

The Motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 24, 2015. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

| |
|--|
| The court's decision is to grant the Motion and convert the case to a case under Chapter 7 of Title 11, United States Code. |
|--|

David Cusick, as Chapter 13 Trustee, filed this Motion to Dismiss on August 24, 2015. Dckt. 31.

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 three separate objections: Trustee's Objection to Confirmation (Dckt. 64); Objection to Confirmation of Plan by Sacramento Sikh Society Bradshaw Temple (Dckt. 65); and Objection to Confirmation of Plan by Bank of America, N.A. (Dckt. 66). 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 which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

However, the court notes that Debtor is enmeshed in an adversary proceeding. Adv. Proc. No. 14-2237. That adversary proceedings has been pending since August 13, 2014. The parties report that the dispute in the adversary proceedings appears to have been settled. Plaintiff's Pretrial Conference Statement and Status Report. 14-2237, Dckt. 35. The court continued the pre-trial conference to allow the parties to document the settlement.

On September 2, 2015, Debtor filed a Defendant's Pre-Trial Status Report. Dckt. 38. Debtor states that a settlement agreement has been signed. No mention is made of what is to happen in the adversary proceeding.

SEPTEMBER 9, 2015 HEARING

At the hearing, the Motion was continued to 10:00 a.m. on October 14, 2015 in light of the Debtor filing a Motion to Approve a Compromise.

DEBTOR'S REPLY

On October 28, 2015, the Debtor filed a reply. Dckt. 124. The Debtor states that Debtor has filed a copy of the settlement agreement in the Adversary Proceeding. The Debtor states it is the same agreement that was previously filed in the instant case.

APPLICABLE LAW

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).

DISCUSSION

On October 6, 2015, the court denied without prejudice the Motion to Approve a Compromise was denied without prejudice. Dckt. 116. The court explicitly found "[t]he proposed compromise has not been presented by the

Debtor, as the fiduciary of the bankruptcy estate, in good faith," namely because the Debtor has failed to accurately and fully explain how the Debtor was to come up with the \$60,000.00 in settlement funds and where the Debtor was going to get those funds.

The Debtor's response to the instant Motion is that the same compromise, that was not approved by the court, has been filed in the Adversary Proceeding. The court does not follow the Debtor or Debtor's counsel argument in how this resolves the Trustee's objection.

The Debtor has been offered multiple opportunities to provide the court with evidence of how the proposed settlement is in good faith and how the Debtor proposes to make such payments. The Debtor, instead of providing the court the specifics, which the court ordered, the Debtor provided unauthenticated exhibits that appeared to "gloss over" the specifics.

Now the Debtor merely states that the same proposed settlement has been filed in the Adversary Proceeding No. 14-02237. A review of the Adversary Proceeding's docket shows that the Debtor merely filed the settlement agreement. No accompanying Motion was filed with the agreement nor is there a request for relief. This appears to be merely a status update.

The Debtor has shown that he is not prosecuting this faith in good faith. The Debtor appears to be seeking the court to approve a settlement without showing that it is, in fact, in the best interest of the estate or where the proposed settlement funds are coming from.

The Debtor has failed to file a proposed amended plan nor any Motion to Confirm. The instant case was filed on July 7, 2014, with no plan being confirmed nearly a year and a half later.

The court finds that the case has reached a point that conversion to a Chapter 7 case is proper. The Debtor, by failing to have a plan confirmed and failing to comply with a court order explaining how and where the settlement funds are coming from, has shown that the Debtor is not fit to act as a fiduciary of the estate. The case has reached a point where an appointment of a third-party Chapter 7 Trustee is necessary to determine whether the settlement is proper and to properly dispose of assets of the estate.

The Debtor has demonstrated that he has assets, and access to assets, to pay creditors. He is choosing to prefer one creditor to the detriment of other creditors. It also appears that the Debtor's interest in the real property may not be as he has stated.

It will be necessary for an independent fiduciary for the estate, to determine what interests and rights the estate has, what creditors have been improperly paid, what monies (if any) need to be recovered, and whether the case should proceed as a Chapter 7.

As previously addressed, Debtor and his attorneys have failed to provide the court with credible evidence in support of the motion to approve the settlement. Civil Minutes, Dckt. 116. This was after the court afforded Debtor and his attorneys additional time to present the credible, properly authenticated evidence.

It appears that Debtor and his attorneys have chosen a strategy to not prosecute the case in good faith, but instead try and have the case dismissed through their inaction.

Therefore, for cause, the court grants the Trustee's Motion and the case is converted to a case under Chapter 7.

The court shall issue a minute 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 converted to a case under Chapter 7 of Title 11, United States Code.

41. [12-34546](#)-E-13 KEITH/ZANETTA ROBINSON MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 10-7-15 [[174](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

42. [15-26247](#)-E-13 RICHARD LAWSON MOTION TO DISMISS CASE
DPC-2 10-7-15 [[25](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 14, 2015 hearing is required.

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

43. [15-27047](#)-E-13 PRISCILLA/ANDREW CARRASCO ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO PAY FEES
10-13-15 [[32](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Priscilla Carrasco ("Debtor"), Debtor's attorney, and Trustee as stated on the Certificate of Service on . The court computes that 20 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 due on October 8, 2015). Dckt. 32.

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured on October 23, 2015.

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

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

The 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.

44. [12-24149](#)-E-13 KURT/CHARMAINE GANDY MOTION TO DISMISS CASE
DPC-6 Kristy Hernandez 10-7-15 [[122](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

45. [14-28649](#)-E-13 THOMAS/HEIDI CARTER MOTION TO DISMISS CASE
DPC-2 Jeffrey Ogilvie 10-7-15 [[75](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 75.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,269.44 delinquent in plan payments, which represents multiple months of the \$4,634.72 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 21, 2015. 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. At the hearing -----
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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
|---|

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 21, 2015. Dckt. 41. The Trustee asserts five grounds for dismissing this case. First, Debtor has not commenced plan payments. Second, Debtor failed to appear at the 341 First Meeting of Creditors. Third, Debtor has not provided tax returns or pay advices to Trustee. Fourth, Debtor has not filed a Motion to Confirm the September 29, 2015 Plan. Finally, Debtor has filed four prior bankruptcy cases in the last 6 years without a change in circumstances.

First, Trustee argues that the Debtor did not commence making plan payments and is \$351.00 delinquent in plan payments, which represents multiple months of the \$351.00 plan payment. 11 U.S.C. §1307(c)(4) permits the

dismissal or conversion of the case for failure to commence plan payments.

Second, 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 meeting has been continued to November 12, 2015 at 11:00 a.m.

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

Fourth, Trustee asserts that the Debtor has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Dckt. 33. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Finally, Trustee asserts Debtor has filed four other cases without a change in circumstances. A review of the court's docket shows Debtor has filed four other bankruptcy petitions, which have been dismissed on the following grounds:

| Case Number | Date Filed | Date Dismissed | Reason Case Closed |
|-------------|------------------|-------------------|--|
| 09-38756 | August 31, 2009 | December 11, 2009 | Debtor granted a discharge under 11 U.S.C. § 727 |
| 11-46231 | November 4, 2011 | December 12, 2011 | Debtor requested dismissal |
| 12-33721 | July 26, 2012 | August 13, 2012 | Failure to Timely File Documents |
| 15-22745 | April 3, 2015 | April 21, 2015 | Failure to Timely File Documents |

While the filing of multiple cases is not, in and of itself, grounds to dismiss the case, the repeated failure of Debtor to complying with the basic requirements of the Bankruptcy Code, like timely filing documents, represents that the Debtor is not pursuing the prosecution of the case in good faith nor that there has been a change in circumstance that shows the Debtor is capable of performing a Chapter 13 plan.

The court has also determined that there is no automatic stay as to the Debtor in this case due to the Debtor's multiple filings, as well as vacating the automatic stay as it would exist for the Estate. Order and Civil Minutes,

Dckts. 40 and 38. The apparent reason for the filing of this bankruptcy case was to assert the automatic stay to prevent the creditor and purchaser at the foreclosure sale from obtaining possession of the real property at issue.

For the foregoing reasons, 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.

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|-----|---------------------------------------|-----------------|---------------------------------------|
| 47. | <u>13-34152</u> -E-13 | ALLISON JOHNSON | MOTION TO DISMISS CASE |
| | DPC-2 | Najeeb Kudiya | 10-7-15 [<u>83</u>] |

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

48. [10-51955](#)-E-13 ALESIA THOMAS
DPC-3 Peter Macaluso

CONTINUED MOTION TO DISMISS
CASE
7-31-15 [[82](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

49. [11-49255](#)-E-13 PATRICK/ERIN JACINTO
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[26](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

50. [14-21955](#)-E-13 STEVEN/DEBRA RAZWICK
DPC-3 Andrew Bakos

CONTINUED MOTION TO DISMISS
CASE
7-30-15 [[94](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2015. 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).

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| The court's decision is to grant the Motion to Dismiss and the case is dismissed. |
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TRUSTEE'S MOTION TO DISMISS

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on July 30, 2015. Dckt. 94. The Trustee seeks dismissal on the ground that the Debtor is delinquent in plan payments.

DEBTOR'S REPLY

The Debtor filed a reply to the instant Motion on August 25, 2015. Dckt. 98. The Debtor states that the delinquency will be cured and an amended plan and Motion to Confirm will be filed and served prior to hearing.

SEPTEMBER 9, 2015 HEARING

At the September 9, 2015 Hearing, the court decided to continue the hearing to allow Debtor time to file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental pleadings to resolve disputed material facts. Dckt. 101.

DEBTOR'S SUPPLEMENTAL DECLARATION

The Debtor filed a supplemental declaration on October 14, 2015. Dckt. 104. The Debtor states that due to Debtor Debra Razwick's fluctuating income, the Debtor fell behind in payments. However, the Debtor states that the Debtor has made three payments to the Trustee since August 12, 2015. The Debtor asserts that according to their records they are delinquent one payment of \$3,131.44. The Debtor states that they will be current at the time of the hearing.

TRUSTEE'S RESPONSE

The Trustee filed a response on October 21, 2015. Dckt. 106. The Trustee states that as of October 21, 2015, the Debtor is delinquent in the amount of \$3,073.28 with the next payment of \$3,115.00 due on October 25, 2015. The Trustee finds the reason for the Debtor's delinquency credible and acknowledges the receipt of the three payments from the Debtor. However, the Trustee reiterates that the Debtor is still delinquent.

DISCUSSION

To date, no evidence has been presented that the delinquency has been cured. Additionally, there are no pending plans or Motions to Confirm currently filed. FN.1.

FN.1. While Debtors have provided a declaration in opposition to the motion, their testimony under penalty of perjury consists of stating "We have reviewed the reply to this Motion [to dismiss], as prepared by our attorney. We further agree and concur with the facts as presented therein." Dckt. 99. The court reads such "testimony" as merely being a statement, "yeah, whatever is said by our attorney in some other pleading is something that we concur with - because it's to our advantage." Interestingly, the "response" by counsel, Dckt. 98, appears to be a generic "check the box" response form, which bears little relationship to the actual circumstances of this specific bankruptcy case.

The Trustee seeks dismissal of the case on the basis that the Debtor is delinquent in the amount of \$3,073.28 with the next payment of \$3,115.00 due on October 25, 2015. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and

upon review of the pleadings, evidence, arguments of counsel,
and good cause appearing,

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

51. [15-26656](#)-E-13 GARY STEPHAN
DPC-2 Dale Orthner

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
10-7-15 [[24](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| <p>The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted.</p> |
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TRUSTEE'S MOTION TO CONVERT FROM CHAPTER 13 TO CHAPTER 7 AND/OR DISMISS

This Motion to Dismiss the Chapter 13 bankruptcy case of Gary Robert Stephan ("Debtor") has been filed by David Cusick ("Movant"), the Chapter 13 Trustee. Movant asserts that the case should be dismissed or converted based on the grounds that the Debtor's Plan fails the liquidation analysis, Debtor failed to attend the 341 First Meeting of Creditors, Debtor did not commence plan payments, and Debtor failed to provide both tax returns and 60 days of pay stubs to Trustee.

DEBTOR'S OPPOSITION

Debtor filed an opposition on October 21, 2015. Dckt. 34. Debtor declares the following to rebut Trustee's grounds:

- A. Trustee misstated Debtor's non-exempt equity in Debtor's home on Hearthside Road; Trustee asserts the non-exempt equity as \$227,677.00, while Debtor asserts it is \$127,677.00 (\$725,000.00 home value on Schedule A, less the \$497,323.00 in secured claims on Schedule D and the \$100,000.00 equity exemption on Schedule C leaves a value of \$127,677.00). On Debtor's calculation, Trustee's liquidation argument is not supported by the evidence;
- B. The day before the scheduled 341 Meeting Debtor was "stuck in southern California at the corporate office of his employer with work issues," and had no viable way to attend the meeting. Debtor's counsel alleges that Trustee responded "meeting was continued to 10/29 at 11 a.m." Debtor declares he intends to appear at the continued meeting;
- C. The delinquency for September 25 was cured the day after Trustee's Motion was filed;
- D. Debtor provided pay stubs from Debtor's SolarCity job to Trustee on September 30, 2015, which included two checks: first, Debtor's last paystub dated July 28, 2015 and showing year to date gross earnings of \$3,581.23; and second, a check dated July 17, 2015. These two pay stubs were all Debtor received prior to the filing date of August 24, 2015;
- E. On October 12, 2015, Debtor provided Trustee with the second paystub from Debtor's new job;
- F. Debtor has no copies of his latest filed tax returns, and has not yet filed his 2013 and 2014 tax returns. This is due to "[m]y circumstances, including my ongoing separation and divorce, have made access to the necessary financial data difficult." Debtor promises to have the 2013 and 2014 tax returns done, filed, and submitted to Trustee within the next month.

Dckt. 1 Schedules A, C, D; Dckt. 34 ¶ 2; Dckt. 35 ¶ 4-8.

APPLICABLE LAW

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).

DISCUSSION

Trustee's objections are well-taken.

First, Trustee asserts that Debtor holds \$227,677.00 in non-exempt equity for real property located at 3 Hearthside Road, Ladera Ranch, California, while Debtor's Plan proposes a 35% dividend to unsecured creditors by paying approximately \$85,639.00.

A review of Debtor's filed Schedules A, C, and D show that Debtor provided a home value of \$725,000.00, secured claims totaling \$497,323.00 FN.1., and a claimed exemption on the real property for \$100,000.00 under C.C.P. § 704.730. The mathematical calculation is,

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|-----------------------------------|-----------------------|
| Value of Property..... | \$725,000.00 |
| Liens..... | <u>(\$497,323.00)</u> |
| Equity in Property..... | \$227,677.00 |
| Debtor's Homestead Exemption..... | <u>(\$100,000.00)</u> |
| Equity for Estate/Creditors..... | \$127,677.00 |

But this is the gross value calculation. For the Property to be reduced to money for creditors, there must be a sale. Estimating costs of sale of 8% (including the a residential sales commission of 6%) for a \$725,000 sales price would be \$58,000.00. Deducting that from the sales proceeds leaves \$69,677.00 on value for creditors.

The 35% dividend proposed by the Trustee is consistent with this amount.

Second, 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. According to Trustee's Motion, and Debtor's Opposition and Declaration, the 341 Meeting was rescheduled for October 29, 2015 at 11:00 a.m. The Trustee filed a Report on October 29, 2015, stating that the Debtor appeared at the continued meeting. Therefore, this ground is overruled.

Third, the Trustee argues that the Debtor did not commence making plan payments and is \$148.89 delinquent in plan payments, which represents one month of the \$148.89 plan payment. Unfortunately, Debtor did not provide sufficient evidence that the delinquency has been cured, and only declares that he has "since made my September 25 payment" without providing evidence of the amount paid. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Finally, Trustee argues that Debtor did not provide 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 2013 and 2014 tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

While Debtor declares that he did provide pay stubs for both his SolarCity job and his "second job," Debtor declares that he has not filed his 2013 or 2014 tax returns due to an "ongoing separation and divorce, which makes access to the financial data difficult." Unfortunately, Debtor's Declaration does not cure Trustee's objection, as the tax returns must be provided 7 days before the date set for the first meeting under 11 U.S.C. § 521(e)(2)(A) and Fed. R. Bankr. Proc. 4002(b)(3). Failure to provide tax returns is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

In total, the Debtor's inability to proceed with this case does not warrant conversion. It may be that Debtor can prosecute a case, but it does not appear that Debtor is able (inability to file tax returns) to prosecute this case.

Cause exists to dismiss this case. The motion is granted and the case is converted to a case under Chapter 7 of Title 11, United States Code.

The court shall issue a minute 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 converted to a case under Chapter 7 of Title 11, United States Code.

52. [11-29457](#)-E-13 ABEL/NORMA CHAVEZ
DPC-3 Steele Lanphier

MOTION TO DISMISS CASE
10-7-15 [[30](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 30.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,100.00 delinquent in plan payments, which represents multiple months of the \$700.00 plan payment. Dckt. 32. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

53. [15-25257](#)-E-13 MEGAN CARR
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-5-15 [[32](#)]

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 Megan Carr ("Debtor"), Debtor's attorney, and Trustee on October 7, 2015. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 28, 2015).

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| The court's decision is to sustain the Order to Show Cause and order the case dismissed. |
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00 due on September 28, 2015.

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

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

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

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

54. [11-35761](#)-E-13 DWIGHT WILLIAMS AND DORI MOTION TO DISMISS CASE
DPC-5 BROWN-WILLIAMS 10-7-15 [[74](#)]
Chad Johnson

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 74. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Debtor filed opposition on October 21, 2015. Dckt. 78. Debtor declares that the reason for the delinquency was because "Dori Williams, was put on disability and my first disability check took some time to come in. Now that the initial check has come in, we are back on track with our payments." Dckt. 79 ¶ 3. Debtor declares that the \$470.00 TFS payment is currently being processed, but Trustee has not confirmed receipt of this payment.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$470.00 delinquent in plan payments, which represents multiple months of the \$235.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Unfortunately the Debtor has not filed evidence that the delinquency has been cured.

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

is dismissed.

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

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

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

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

55. [15-21163](#)-E-13 GIANNE/RUBY-ROSE APURADO MOTION TO DISMISS CASE
DPC-2 Julius Engel 10-7-15 [[63](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The court's decision is to continue the Motion to Dismiss to 3:00 p.m. on December 8, 2015. |
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David Cusick, the Chapter 13 Trustee, asserts that Gianne and Ruby-Rose Apurado's ("Debtor's") case should be dismissed on two grounds. First, Debtor is delinquent on plan payments. Second, Debtor has not filed a new plan.

First, Trustee seeks dismissal of the case on the basis that the Debtor is \$2,744.26 delinquent in plan payments, which represents almost one month of the \$3,529.18 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, the Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 20, 2015. Dckt. 59.

Debtor filed opposition on October 21, 2015. Dckt. 74. Debtor has filed, noticed, and served an Amended Plan on October 15, 2015. Dckt. 67, 73.

November 4, 2015 at 10:00 a.m.

- Page 74 of 106 -

In light of the interconnectedness of the instant Motion and the Motion to confirm, the Motion to Dismiss is continued to December 8, 2015, at 3:00 p.m. to be heard in conjunction with the Motion to Confirm.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 3:00 p.m. on December 8, 2015.

56. [15-24763](#)-E-13 TITO AMARO
DPC-3 Scott Johnson

MOTION TO DISMISS CASE
10-7-15 [[38](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7 2015. Dckt. 38. The Trustee seeks dismissal due to the Debtor failing to file a proposed plan following the denial of the prior proposed plan.

Debtor filed opposition on October 9, 2015. Dckt. 42. Debtor merely promises to file, serve, and notice a Modified Plan on or before the hearing.

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 23, 2015. Dckt. 31. 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 which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

57. [15-26063-E-13](#) REGINALD NORRIS MOTION TO DISMISS CASE
DPC-2 Pro Se 10-7-15 [[24](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on October 7, 2015. Dckt. 24. Trustee asserts dismissal is proper on the grounds that: the filed plan is incomplete; Debtor is delinquent; the Trustee has not received tax returns for the 2014 taxable year; and Debtor failed to file a credit counseling certificate.

Trustee's first objection is that Debtor's failure to file a complete plan creates unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(a)(1). A plan that does not provide for Class 1, 2, 3, 4, 5, 6, or 7 creditors, and does not provide for any claims, appears to be filed in bad faith to prevent creditors from collecting against Debtor with no intent to pay them back. Filing a blank plan is evidence of unreasonable delay which is

prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, and related to the first objection the Trustee argues that the Debtor did not commence making plan payments, and has not provided the amount for monthly payments due under the Plan. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

Finally, Trustee asserts that Debtor is not eligible to be a debtor under 11 U.S.C. § 109(h) because Debtor failed to file a Credit Counseling Certificate. The Credit Counseling Certificate must be filed within 45 days of filing the bankruptcy petition. 11 U.S.C. § 521(I). As this case was filed in July 31, 2015, this case must be dismissed pursuant to § 521(I) for failure to file required documents.

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 15, 2015. 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).

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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Maurice Carr ("Debtor") filed *pro se* for Chapter 13 relief on May 19, 2015. Dckt. 1.

TRUSTEE'S MOTION TO DISMISS

David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 15, 2015. Dckt. 47. Trustee asserts two grounds for dismissal:

1. Debtor failed to file a tax transcript, copy of Federal Income Tax Return, or a written statement that no such documentation exists. While Debtor stated in his Motion to Confirm that he is not required to file tax returns since 2012, Trustee's Response requested the 2012 return; this return has not been received by the Trustee.

2. Debtor is \$199.00 delinquent in plan payments, which represents multiple months of Debtor's \$90.00 monthly payments due.

Dckt. 49 ¶ 3(a, b).

DEBTOR'S OPPOSITION

Debtor filed an opposition on September 22, 2015. Dckt. 51. Debtor declares, under penalty of perjury, that Debtor is receiving military disability benefits, has been offered gainful employment, and is living at home and does not intend to surrender the property. Dckt. 52 ¶ 3, 4, 7. Further, Debtor has "decided to extend the length of my plan to 60 months which will allow my payments to be lower and allow me time pay [sic] more into the plan." *Id.* at ¶ 6.

TRUSTEE'S RESPONSE

Trustee filed a response on September 30, 2015. Dckt. 60. Trustee asserts the following:

1. Trustee has received various tax documents, but has yet to receive a copy of the 2012 tax return or a complete tax return transcript for the 2012 tax year.
2. Trustee received a payment of \$200.00 on September 21, 2015. However, Debtor is still delinquent \$169.00 under the filed September 22, 2015 Amended Plan, which calls for payments of \$110.00 per month; the prior, unconfirmed August 10, 2015 plan calls for payments of \$90.00 per month.

Trustee now requests the Motion to Dismiss be continued to November 4, 2015, at 10:00 a.m. to allow Debtor more time to address the Trustee's concerns and set a Motion to Confirm hearing for the September 22, 2015 Amended Plan.

OCTOBER 14, 2015 HEARING

At the October 14, 2015 Hearing, the court granted Trustee's request to continue this matter in order to give Debtor time to cure the deficiencies raised by Trustee. Dckt. 65.

DEBTOR'S OPPOSITION

The Debtor filed a subsequent opposition on October 15, 2015. Dckt. 62. The Debtor states that the Debtor does not have a hard copy of the tax forms for 2012 but has given the Trustee copies of all information dated back to 2010.

The Debtor also alleges that he has made all payments to the Trustee through the TPS system.

The Debtor states he has been able to secure employment. Also, the Debtor state that the \$25.00 listed in Schedule J is for household/cleaning/food incidents that the \$194.00 the Debtor receives in state

aid does not cover.

TRUSTEE'S RESPONSE

The Trustee filed a response on October 28, 2015. Dckt. 68. The Trustee first states that the Trustee has not received a copy of a tax return or tax transcript for tax year 2012.

The Trustee next states that the Debtor is currently \$109.00 delinquent in plan payments.

The Trustee notes that the Debtor has failed to file a subsequent proposed plan or Motion to Confirm following the denial of the Debtor's previous plan.

Lastly, the Trustee asserts that based on the continued deficiencies, the Debtor will not be able to successfully prosecute the instant case.

DISCUSSION

The Trustee's basis for dismissal are well-taken.

The Trustee first argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the 2012 tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee additionally seeks dismissal of the case on the basis that the Debtor is \$109.00.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 22, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

While the Debtor's supplemental opposition states that the Debtor has secured gainful employment, the Trustee's grounds for dismissal are still unresolved. The Debtor remains delinquent and there is no proposed modified plan or Motion to Confirm filed.

While well intentioned, it appears that Debtor is not able to prosecute this case in pro se. This is Debtor's second case in the last two years. The first case was filed on November 11, 2015 and closed on November 10, 2014. Chapter 7 Case No. 14-31079, Discharge Entered March 3, 2015.

Given that Debtor lists modest debt to be paid in the plan, \$1,200 to County of Sacramento and \$4,800 to Southgate Mobile Estate, Debtor's new employment may allow him to address these two claims outside the confines of bankruptcy.

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

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

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

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

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

59. [11-29166](#)-E-13 MICHAEL/JENNIFER PETERS MOTION TO DISMISS CASE
DPC-3 Mark Wolff 10-7-15 [[111](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to

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

DEBTOR'S RESPONSE

Michael and Jennifer Peters ("Debtor") filed an opposition on October 21, 2015. Dckt. 115. Debtor declares that, after reviewing the Trustee's evidence, they believe the Trustee's records are missing payments for June 2013 and August 2015. Dckt. 116 ¶ 5, 6. Debtor believes that there was some error due to Debtor sending the payments to the Trustee's prior physical address, which had changed in mid-2015. *Id.* at ¶ 5.

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

TRUSTEE'S RESPONSE

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

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,655.00 delinquent in plan payments, which represents multiple months of the \$3,825.00 plan payment.

Despite Debtor's efforts to pay the October 2015 plan payment, Debtors have offered no evidence to demonstrate that the Trustee's records are in error or that the Debtor is current to date.

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

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

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

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

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

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

60. [15-25168](#)-E-13 DEBRA MCCLAIN MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 10-6-15 [[31](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

61. [14-23669](#)-E-13 DAVID/JESSICA CERVANTES MOTION TO DISMISS CASE
DPC-2 David Ritzinger 10-7-15 [[50](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

62. [11-46675](#)-E-13 MARIO/JESSICA BLANCO MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 10-7-15 [[50](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

63. [12-20479](#)-E-13 JULIA NOTO MOTION TO DISMISS CASE
DPC-7 Richard A. Chan 10-7-15 [[59](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

64. [15-20080](#)-E-13 JESUS/JESSICA CARDENAS CONTINUED MOTION TO DISMISS
DPC-2 Ashley Amerio CASE
9-16-15 [[54](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 16, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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| The court's decision is to grant the Motion to Dismiss and dismiss this case. |
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David Cusick, the Chapter 13 Trustee ("Trustee") filed the instant Motion to Dismiss on September 16, 2015. Dckt. 54. Trustee asserts that Debtor is delinquent \$6,535.00, which represents multiple months of Debtor's \$4,535.00 monthly payment. Dckt. 56 ¶ 3.

DEBTOR'S RESPONSE

Debtor filed a response September 30, 2015. Dckt. 58. Debtor merely alleges that a payment of \$1,200.00 was mailed on September 28, 2015, and a second payment of \$1,900.00 was mailed on September 29, 2015. Debtor also claims the account will be current by the hearing. No evidence has been presented to substantiate these claims.

OCTOBER 14, 2015 HEARING

At the October 14, 2015 hearing, this court continued the matter to allow time for parties to file supplemental pleadings by October 30, 2015. Dckt. 61.

DISCUSSION

A review of the court's docket shows that no supplemental pleadings or documents have been filed since the October 14, 2015 hearing.

Trustee's objection is well-taken.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,535.00 delinquent in plan payments, which represents multiple months of the \$4,535.00 plan payment. Even taking Debtor's allegations as true, the account is still delinquent by \$3,435.00; a promise to pay does not cure the delinquency. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

65. [15-26180](#)-E-13 MYRNA MCDONALD
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-7-15 [[29](#)]

DEBTOR DISMISSED: 10/19/2015

Final Ruling: No appearance at the November 4, 2015 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.

66. [12-25182](#)-E-13 ELLIOTT/TANYA BEVERLEY
DPC-5 Eric Schwab

MOTION TO DISMISS CASE
10-7-15 [[64](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

67. [15-22182-E-13](#) RUTH CLARK
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[104](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

68. [15-22783](#)-E-13 CRISTOFER ALARCON
DPC-2 Pro Se

MOTION TO DISMISS CASE
10-7-15 [[70](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 70.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,250.00 delinquent in plan payments, which represents multiple months of the \$1,625.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

69. [14-23385](#)-E-13 MICHELE WILLIAMS
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[120](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 120. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Debtor filed opposition on October 21, 2015. Dckt. 73. Debtor merely promises to file, serve, and notice a Modified Plan on or before the hearing that will bring Debtor current.

However, a review of the court's docket shows no proposed plan has been filed nor has the Debtor provided evidence that the Debtor is current under the confirmed plan.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,940.00 delinquent in plan payments, which represents multiple months of the \$2,897.00 plan payment. Dckt. 122. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Under penalty of perjury Debtor has stated that she has \$2,430.88 in Monthly Net Income to fund a plan. Exhibit 2 (income) and Exhibit 3 (expenses), Dckt. 96; and Declaration, Dckt. 95. With only \$2,897.00 of Monthly Net Income, it is a financial impossibility for Debtor to have \$11,837.00 (3 months defaulted payments and current month) in one month to cure the defaults. Debtor has offered no evidence how she could have such extra money to cure the default (or where the missing \$8,940.00 is located or expended). Debtor fails, or refuses, to provide any testimony or evidence in opposition to this motion. Rather, she merely has her attorney promise some future plan to be 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.

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

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

Below is the court's tentative ruling.

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

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

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

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| <p>The court's decision is to deny the Motion to Dismiss the case.</p> |
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David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss on October 7, 2015. Dckt. 116. Trustee asserts that Paul Ludovina ("Debtor") is in material default because Debtor's July 10, 2015 Third Amended Plan does not provide for the Priority claim of the State Board of Equalization in the amount of \$50,000.00. Under § 2.13 of the Plan, this failure is a breach of the plan.

The court notes that the July 10, 2015 Plan was confirmed on September 17, 2015. Dckt. 109, 117. The State Board of Equalization was provided notice of the confirmation hearing on July 10, 2015. Dckt. 110. Debtor's Declaration for the Motion to Confirm states that the State Board of Equalization was removed from Debtor's personal bankruptcy case because "this is a business debt and I am not personally responsible for the debt." Dckt. 107 ¶ 4(I). Trustee filed a nonopposition to confirmation of the July 10, 2015 Plan on August 17, 2015.

The Motion to Confirm states that the Debtor "withdrew" Proof of Claim No. 7, which the Debtor's attorney filed on behalf of the State Board of Equalization due to it not filing one on its own. Dckt. 105. While the Debtor states that the Proof of Claim was withdrawn, the Debtor has not filed any

documents purporting to so do. The Debtor has filed an Amended Schedule F which no longer lists the California State Board of Equalization as having a general unsecured claim.

While the Chapter 13 Trustee stated no opposition to confirmation, that does not obviate the need for Debtor to address the Proof of Claim which has been filed in this case and is given prima facie weight for the debt. The fact that Debtor choose to amend his Schedule to delete a creditor in a Chapter 13 case does not mean that such an amendment is the Debtor's exercise of a power to disallow a claim for which a proof of claim has been filed.

It is settled law in the Ninth Circuit that a proof of claim is *prima facie* evidence of the validity the claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

"Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more."

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, *Collier on Bankruptcy* § 502.02, at 502-22 (15th ed. 1991)). The presumptive validity of the claim may be overcome by the objecting party only if it offers evidence of equally probative value in rebutting that offered by the proof of claim. *Holm* at 623; *In re Allegheny International, Inc.*, 954 F.2d 167, 173-74 (3rd Cir. 1992). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing the claim. *In re Knize*, 210 B.R. 773, 779 (Bankr. N.D. Ill. 1997).

The Proofs of Claims filed in this case include the following:

- a. California Franchise Tax Board, Amended Proof of Claim No. 8, Filed November 3, 2014.
 - i. Priority.....(\$13,014.21)
 - ii. General Unsecured.....(\$ 2,325.81)
- b. California State Board of Equalization, Proof of Claim No. 7, Filed June 20, 2014, Signed by Counsel for Debtor.

i. Priority.....(\$50,000.00)

In filing this Proof of Claim, Debtor, through counsel stated the claim under penalty of perjury.

c. Internal Revenue Service, Amended Proof of Claim No. 2, Filed September 30, 2014.

i. Priority.....(\$47,066.27)

ii. General Unsecured.....(\$ 8,203.65)

Debtor does not provide for the California State Board of Equalization Claim, even though a proof of claim has been filed under penalty of perjury.

Filing of Proof of Claim by Debtor

Debtor availed himself of the right to file a proof of claim for the creditor as provided in 11 U.S.C. § 501(c). Federal Rule of Bankruptcy Procedure 3004 provides that upon the debtor filing a proof of claim for a creditor, the Clerk of the Court shall provide notice to the creditor of the claim having been filed. The Federal Rule of Bankruptcy Procedure also provide that a creditor may unilaterally withdraw a proof of claim under specified circumstances, with leave of the court required in all other situations. Fed. R. Bankr. P. 3006. No provision is made for a debtor or trustee to withdraw a proof of claim which as been filed in a bankruptcy case.

Proof of Claim No. 7 states that the State Board of Equalization has a \$50,000.00 claim (right to payment) against the Debtor for "business taxes." This are stated to be priority taxes (and possibly nondischargeable pursuant to 11 U.S.C. § 1329(a)(2)) pursuant to 11 U.S.C. § 507(a)(8).

Consistent with Proof of Claim No. 7, Debtor listed the California State Board of Equalization as a the holder of an priority unsecured claim in the amount of \$50,000.00 on Original Schedule E. Dckt. 1 at 16. No other information about this scheduled priority unsecured claim is provided on Schedule E.

Presumably, the California State Board of Equalization has been listed for unpaid sales taxes owed by Ludy's Inc., which is 100% owned by Debtor (Schedule B, Dckt. 1 at 11) and for which the Debtor is the president and CEO (Amended Schedule I filed January 30, 2015, Dckt. 84). FN. 1.

FN.1. The court notes that this Schedule I was filed on January 30, 2015 is stated to be both an "amended filing" and a "supplement" to state post-petition changes in income. It cannot be both, as an amended Schedule I dates back to the filing of the case, correcting an error in the Original Schedule I. The Debtor's attempt to mis-characterize it as both may well render the information provided therein unreliable.

EFFECT OF CONFIRMED CHAPTER 13 PLAN

The Debtor's Motion to confirm the Chapter 13 Plan appears to assert that the Claim of the State Board of Equalization can be ignored because a

belief that "they refuse to be treated in the Chapter 13 Plan." Motion, p. 2:18-19; Dckt. 105. While stating that Debtor has amended Schedule F, Debtor has never amended Schedule E in which this claim is listed. Further, the listing or non-listing of a claim in a Chapter 13 case does not give it any "claim status," as the deemed allowed provisions in Chapter 11. 11 U.S.C. § 1111(a).

As stated above, the Bankruptcy Code and Bankruptcy Rules do not provide that a debtor may unilaterally "withdraw" a creditor's claim once filed. If Debtor believes that the obligation stated in the claim cannot be enforced against him, then he should have objected to the claim. As part of any objection, the Debtor would have to clearly explain why he now contends he doesn't owe the obligation, after Debtor's attorney filed the proof of claim.

The Debtor's Motion to Confirm may be stating that the State of California has agreed to hold the responsible person liability of Debtor in abeyance during the term of the Plan, letter the Debtor focus on paying the other nondischargeable priority taxes. Given the 0.00% dividend for creditors holding general unsecured claims and the plan providing for paying no other claims, such an assumption may not be unwarranted. It may further be a belief that the Debtor, through the rehabilitation of his finances can restructure the finances of Ludy's Inc. and the corporation (or the Debtor) may be able to repay the outstanding State Board of Equalization taxes after completion of the plan

In a Chapter 13 case, with specified exceptions, upon completion of the plan the debtor may be granted a discharge for all debts provided for by the plan. 11 U.S.C. § 1328(a). The priority unsecured claim of the California State Board of Equalization is not provided for in Class 5 of the confirmed plan. Third Amended Plan, Dckt. 109. Additionally, the Chapter 13 discharge does not apply to priority taxes specified in 11 U.S.C. § 507(a)(8)(C).

The Trustee is correct that the priority tax claim of the California State Board of Equalization is not provided for in the Plan. While the Debtor states that the Board of Equalization was provided with notice of the Plan which does not provide for the claim, the court notes that the only address for this creditor on the certificate of service (Dckt. 110) is,

State Board of Equalization
PO Box 942879
Sacramento, CA 94279.

The Roster of Governmental Agencies posted on this court's website specifies the following addresses to use for service for the California State Board of Equalization:

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| Service of Summons and Complaint in Adversary Proceedings: Executive Director California State Board of Equalization 450 N St MIC 73 Sacramento, CA 95814-0073 | Service of Bankruptcy Code §505 Requests: California State Board of Equalization Special Operations Bankruptcy Team MIC 74 PO Box 942879 Sacramento, CA 94279-0074 |
|--|--|

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| <p>Service of Notice of Objection to Claim:</p> <p>Use the address specified on the Proof of Claim filed in the case by the State Board of Equalization</p> | <p>All Other Service and Bankruptcy Notices:</p> <p>California State Board of Equalization Account Information Group MIC 29 PO Box 942879 Sacramento, CA 94279-0029</p> |
|---|---|

While the Debtor used part of the address provided for 11 U.S.C. § 505 tax determination proceedings, such a motion was not before the court. Generally, motions must be served as provided for complaints in adversary proceedings. Federal Rules of Bankruptcy Procedure 9014(b) and 7004.

Construing the Debtor's statements in the Motion to Confirm the Plan as those of there being an understanding that the claim (if any) of the California State Board of Equalization is not to be provided for in the Plan, and the court confident that the Debtor and Debtor's counsel understands the significance of the issues relating to such possible claim (both as to the substantive law and Due Process procedural issues relating to service), the court believes this may be a rare case in which a claim may not be provided for and allowed to be addressed by the parties (to the extent that such a claim exists) after the plan has been completed.

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 is denied.

71. [15-27087](#)-E-13 SCOTT GARRINGER
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-14-15 [[20](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Scott Garringer ("Debtor"), Debtor's attorney, and Trustee as stated on the Certificate of Service on October 16, 2015. The court computes that 19 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 due on October 9, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured on October 15, 2015.

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

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

The 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.

72. [14-28890-E-13](#) JOANN ARTIAGA
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[68](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

73. [13-24993](#)-E-13 DENNIS/SANDRA CUVA
DPC-5 Peter Macaluso

MOTION TO DISMISS CASE
10-7-15 [[160](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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| The court's decision is to grant the Motion to Dismiss and dismiss the case. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 160. The Trustee seeks dismissal due to the Debtor's delinquency in plan payments.

Debtor filed opposition on October 21, 2015. Dckt. 164. Debtor merely promises to file, serve, and notice an Amended Plan on or before the hearing that will bring Debtor current.

However, a review of the court's docket shows no Plan has been filed to date nor that the Debtor has cured the delinquency.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,400.00 delinquent in plan payments, which represents multiple months of the \$2,700.00 plan payment. Dckt. 162. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

holding that:

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

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

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

74. 14-22193-E-13 **SANTHIA FORD** **MOTION TO DISMISS CASE**
 DPC-2 **Mohammad Mokarram** **10-7-15 [[19](#)]**

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 19.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$230.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

75. [14-26593](#)-E-13 CATHERINE WILLIAMS SHAW MOTION TO DISMISS CASE
DPC-1 Christian Younger 10-7-15 [[39](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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| The Motion to Dismiss is granted and the case is dismissed. |
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David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on October 7, 2015. Dckt. 39.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,324.00 delinquent in plan payments, which represents multiple months

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of the \$662.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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| 76. | <u>15-20594</u> -E-13 LARRY SCHOLL DPC-1 Kristy Hernandez | MOTION TO DISMISS CASE 10-7-15 [<u>27</u>] |
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Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

77. [15-22094-E-13](#) RL/AMY WARD MOTION TO DISMISS CASE
DPC-3 Mark Briden 10-7-15 [[62](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

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

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

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

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

78. [15-24594](#)-E-13 GARY/TAMRA SPENCER
DPC-2 George Burke

MOTION TO DISMISS CASE
10-7-15 [[26](#)]

Final Ruling: No appearance at the November 4, 2015 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.

79. [11-43797](#)-E-13 RICHARD/TERRI KIIKVEE MOTION TO DISMISS CASE
DPC-1 David Ritzinger 10-7-15 [[48](#)]

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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

80. [10-45399](#)-E-13 JOSE/MARIA ZUNIGA MOTION TO DISMISS CASE
DPC-1 10-7-15 [[36](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 4, 2015 hearing is required.

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