

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

November 12, 2014 at 10:00 a.m.

1. 09-39001-E-13 ANN HARVELL MOTION TO DISMISS CASE
DPC-1 Scott Sagaria 9-30-14 [[72](#)]

Final Ruling: No appearance at the November 12, 2014 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 14, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on September 30, 2014. Dckt. 72. FN.1.

FN.1. A service error on September 30, 2014 caused the Trustee's office to re-notice and properly serve the necessary parties on October 14, 2014. Dckt. 76.

The Trustee seeks dismissal of the case on the basis that Ann Harvell ("Debtor") is \$708.15 delinquent in plan payments, which represents multiple months of the \$237.93 plan payment. Another monthly plan payment will come due before the hearing date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor has not filed opposition to this motion.

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

November 12, 2014 at 10:00 a.m.

- Page 1 of 56 -

is dismissed.

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

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

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

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

2.	14-23504-E-13	SHERMAN/MAXINE THOMPSON	MOTION TO DISMISS CASE
	DPC-3	Scott Sagaria	10-15-14 [66]
	CASE DISMISSED 7/14/14		

Final Ruling: No appearance at the November 6, 2014 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.

3. [09-46509-E-13](#) CHERYL TORGERSON
DPC-6 Leticia Tanner

MOTION TO DISMISS CASE
9-30-14 [[75](#)]

Final Ruling: No appearance at the November 6, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,495.65 delinquent in plan payments, which represents multiple months of the \$3,174.18 plan payment, with another payment coming due prior to this hearing. 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.

November 12, 2014 at 10:00 a.m.

- Page 3 of 56 -

4. [10-45712](#)-E-13 MARC CASTELLI MOTION TO DISMISS CASE
DPC-4 C. Anthony Hughes 10-10-14 [[47](#)]

Final Ruling: No appearance at the November 12, 2014 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.**

5. [12-32013](#)-E-13 VICTOR/CELESTE ROMERO MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 10-10-14 [[106](#)]

Final Ruling: No appearance at the November 12, 2014 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 10, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

Victor and Celeste Romero ("Debtor") have not paid the federal income tax return for the 2012 tax year which was filed October 15, 2013 has a balance due of \$106,889.24. Filing and payment of the return is required. 11 U.S.C. § 1308. Debtor's failure to pay post-petition federal income taxes is grounds to dismiss the case. 11 U.S.C. §§ 1307(e), 1308(b). Debtor is in default of 28 U.S.C. §§ 959 & 960, Local Bankr. R. 3015-1(b)(4), and § 5.02 of the Plan.

Further, Debtor has not complied with the Order to Modify Chapter 13

November 12, 2014 at 10:00 a.m.

- Page 4 of 56 -

Plan (Dckt. 98). Specifically, the Order required the Debtor to "immediately notify the Trustee in writing of any termination, reduction of, or other change in the employment of the debtor." Debtor is currently operating as Victor Romero Corp dba Construction First Services, however Schedule I reports Debtor's employer as First Corp. Dckt. 9. The corporation (First Corp.) is listed as FTB Suspended on the California Secretary of State's website. Dckt. 110, Exhibit 1. Construction First Services is not listed in Debtor's schedules and no amendment has been made to include such entities. This is in violation of the Plan § 5.02.

Debtor's confirmed plan classifies the Silver Bend property as a Class 3 surrender. Dckt. 32. However, Debtor's petition reports 9344 Silverbend Lane as Debtor's residence and the property listed on Schedule A. Dckt. 9. On October 2, 2014 a Notice of Mortgage Payment change was filed by the Creditor. Dckt. 104. Trustee has been unable to locate a change of address for Debtor and it appears the property has not been surrendered. Debtor is in violation of the Plan §§ 2.10, 5.01.

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

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

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

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

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

6. [10-29118](#)-E-13 TERRIE WILSON MOTION TO DISMISS CASE
DPC-6 Peter Macaluso 9-30-14 [[90](#)]

Final Ruling: No appearance at the November 12, 2014 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. [14-26919](#)-E-13 RODERICK ROBBINS MOTION TO DISMISS CASE
DPC-2 Stephen Murphy 10-15-14 [[35](#)]

Final Ruling: No appearance at the November 12, 2014 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.**

8. [14-26820-E-13](#) JUVENAL ZAMORANO
DPC-2 Thomas Gillis

MOTION TO DISMISS CASE
10-15-14 [[35](#)]

Final Ruling: No appearance at the November 12, 2014 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 15, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee'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 9, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny the Motion to Dismiss.

The Chapter 13 Trustee seeks dismissal of Debtors' case because the Debtors are in material default. Debtor has failed to provide for the Priority Portion of the claim of the Franchise Tax Board (Claim 4) in the amount of \$5,443.00. This failure is a breach of the Plan under §2.13. Notice of Filed Claims filed on November 13, 2013 listed this claim as priority and not provided for in the plan and it was indicated that a motion to modify was required. Dckt. 86. Failure to provide for a priority claim is prejudicial to creditors. 11 U.S.C. § 1307(c)(6).

OPPOSITION

The Debtor filed an opposition stating that no Objection to Confirmation regarding the Franchise Tax Board was filed by any party. 11 U.S.C. § 1327. Debtor notes "[i]t is well established that principles of *res judicata* and finality, as partly codified in Section 1327, can make even "illegal" provisions of a Chapter 13 plan binding. *In re Brawders*, 503 F. 3d 856, 867 (9th Cir. 2007), (citing *Great Lakes Higher Educ. Corp. v. Pardee (In re Pardee)*, 193 F.3d 1083 (9th Cir. 1999)).

Additionally, Debtor states this Court confirmed the Plan on November

22, 2013 and since then Debtor has made all payments required under the Plan. Debtor requests the Court to deny Trustee's Motion to Dismiss because the Plan does not call for priority payments to be made to the Franchise Tax Board.

DISCUSSION

After reviewing the record, the Debtor's opposition is correct in noting that no opposition was filed by the Franchise Tax Board or the Trustee regarding Claim 4 and the Plan was confirmed on November 22, 2013. Dckt. 88.

However, the Debtor neglected to cite that "[t]he starting point is that a debtor asserting *res judicata* has the burden of proof on all elements and bears the risk of non-persuasion." *In re Brawders*, 503 F. 3d 856, 867 (9th Cir. 2007) (internal citations omitted). The Ninth Circuit further elaborated by stating:

[A] plan should clearly state its intended effect on a given issue. Where it fails to do so it may have no *res judicata* effect for a variety reasons: any ambiguity is interpreted against the debtor, any ambiguity may also reflect that the court that originally confirmed the plan did not make any final determination of the matter at issue, and claim preclusion generally does not apply to a "claim" that was not within the parties' expectations of what was being litigated, nor where it would be plainly inconsistent with the fair and equitable implementation of a statutory or constitutional scheme.

Id.

Much like how the Debtor may have failed to provide for treatment of the priority creditor in the plan, the Debtor has not addressed the burden and requirements for a confirmed plan to have preclusive effects on an objection. Here, the Debtor has not satisfied the burden of asserting all the elements of *res judicata*, nor did the Debtor show that the confirmed plan made any final determinations as to the lesser treatment of the priority creditor.

Because the Debtor has not shown that the confirmed plan was a final determination as to the status of the priority creditor for preclusive effect, the Debtor's objection to the Motion is overruled. Therefore, the Trustee's argument that the Franchise Tax Board was not properly provided for in the plan is well-taken and cause does exist to dismiss this case. The motion is granted and the case is dismissed.

Default Exists on Face of Confirmed Plan

More significantly, the Debtors have a plan, which now on its face, is patently deficient. Debtors filed the First Amended Plan on August 14, 2013. Dckt. 50. Proof of Claim No. 4 was filed on August 1, 2013. The First Amended Plan does not provide for the Franchise Tax Board Priority Claim. No objection to the Franchise Tax Board Priority Claim has been filed.

Debtors appear to be operating on a fundamental, and fatal, misunderstanding of the law. They assert that by virtue of confirmation of this plan which fails to provide for the Franchise Tax Board Priority Claim, the Franchise Tax Board has "agreed to accept less" under § 2.13 of the Plan,

specifically zero dollars." Basically, Debtors argue that since they failed to provide for the claim, then the claim is extinguished.

Silence is not consent to the forfeiture of a priority, nondischargeable claim. The Debtors did not provide for this Priority Claim and do not purport that it is to be paid \$0.00. They just ignore the claim.

Rather than Debtors' contention that ignoring Proof of Claim No. 4 being consent to forfeiture of the claim, there are two proper interpretations of the Plan:

- A. The confirmed First Amended Plan, § D. ¶ 2.13, requires that all Priority Claims will be paid in full, stating,

"D. Unsecured Claims

2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable."

This section of the confirmed plan does not state, "only those Priority Claims listed below" will be paid in full." Rather, Class 5 consists of the "unsecured claims entitled to priority pursuant to 11 U.S.C. § 507." Further that these claims "will" (not may, might, or possibly) be paid in full. The confirmed First Amended Plan requires the Debtors to pay all priority claims, including Proof of Claim No. 4 in full through the Plan.

- B. Debtors confirmed First Amended Plan, § D ¶ 2.13, expressly provides, and binds the Debtors, to the term that the "The failure to provide the foregoing treatment for a priority claim is a breach of this plan."

The Debtors have failed to provide for payment of the Franchise Tax Board Priority Claim. By the express terms of the confirmed First Amended Chapter 13 Plan the Debtors are in default of the confirmed Plan.

There also appears to be a further significant flaw to Debtor's theory. Proof of Claim No. 4 asserts a Priority Claim in the amount of \$5,443.00 asserting it as being a tax claim subject to 11 U.S.C. § 523(a)(8). The Bankruptcy Code provides that a discharge in a Chapter 13 case does not discharge specified debts, which include debts subject to 11 U.S.C. § 523(a)(8). 11 U.S.C. § 1328(a)(2). Debtor could be sowing the seeds for post-bankruptcy failure by building a ticking, interest bearing, tax debt time bomb, rather than providing for it in the Chapter 13 plan and paying it as a priority claim. FN.1.

FN.1. The First Amended Chapter 13 Plan which was confirmed was filed by Debtor on August 14, 2013. Dckt. 50. Proof of Claim No. 4 was filed on August 1, 2013. It is possible in the hustle and bustle of getting the proposed plan and motion to confirm filed, Proof of Claim NO. 4 was missed by Debtor and counsel. However, in the 42+ days notice period prior to confirmation, when Debtor did a claim "date down" review, this priority claim could have been caught. If Debtor had properly disclosed to the court that the First Amended Plan failed

to provide for the priority tax claim, then the Plan would not have been confirmed. Debtor cannot argue that the failure to properly disclose information precludes the proper application of the law and the terms of the confirmed First Amended Plan.

The Debtors being in default, the Motion is granted and the Chapter 13 case is dismissed.

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

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

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

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

10. [13-26330](#)-E-13 BARRY HENNING
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
9-30-14 [[66](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. FN. 1.

FN.1. Notice was reissued on October 14, 2014 due to a delivery error however the second notice still meets the 28 day requirement.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,080.00 delinquent in plan payments, which represents multiple months of the \$340.00 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.

11. [10-46636](#)-E-13 JOSEPH/KIMBERLY OLIVA
DPC-8 C. Anthony Hughes

MOTION TO DISMISS CASE
10-14-14 [[100](#)]

Final Ruling: No appearance at the November 12, 2014 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. [13-35337](#)-E-13 JESSICA DYKES
DPC-1 Scott Sagaria

MOTION TO DISMISS CASE
9-30-14 [[47](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. FN. 1.

FN.1. Notice was reissued on October 14, 2014 due to a delivery error however the second notice still meets the 28 day requirement.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,759.40 delinquent in plan payments, which represents multiple months of the \$440.00 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.

13. 14-28141-E-13 ELIZABETH SPEARS
DPC-2 Mikalah Liviakis

MOTION TO DISMISS CASE
10-29-14 [29]

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 29, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$660.00 delinquent in plan payments, which represents multiple months of the \$330.00 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.

14.	09-45945-E-13 THOMAS HARDER DPC-1 Robert Goldstein	CONTINUED MOTION TO DISMISS CASE 8-29-14 [91]
-----	---	---

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 29, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 29, 2014. Dckt. 91. The Trustee alleges that Thomas Harder ("Debtor") is \$630.00 delinquent in plan payments. Before the hearing date, another monthly payment of \$210.00 will come due.

DEBTOR'S RESPONSE

Debtor filed a response to the Trustee's Motion on October 1, 2014. Dckt. 95. Debtor is in month 59 of his Chapter 13 Plan and has kept current on payments until recently, when Debtor lost his job in March 2014. Debtor has since found employment at roughly the same pay as his prior job and anticipates bringing his plan current on or before October 15, 2014. If Debtor is unable to do so by the date of the hearing, he will file a Motion to Modify or propose an agreement with the Trustee's office to catch up on the remainder of his payments at the time Debtor reaches the 60th month of his Plan.

OCTOBER 15, 2014 HEARING

November 12, 2014 at 10:00 a.m.

The court continued the hearing to November 12, 2014 because Debtor explained his situation in his response. In light of the Debtor's prior performance and limited number of payments remaining, the court continued the hearing to allow Debtor to take appropriate action to catch up on his plan payments.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is at least \$630.00 delinquent in plan payments, which represents multiple months of the \$210.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Nothing further has been filed to this motion since this Court continued the hearing, Debtor filed a Motion to Modify Plan on October 14, 2014. The Debtor filed a Notice of Withdrawal of the Motion to Modify Plan on November 3, 2014. Dckt. 108.

The motion is granted and the case is dismissed.

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

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

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

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

15. [10-39147](#)-E-13 TIMOTHY/DASHA MOORE
DPC-2 Timothy Walsh

MOTION TO DISMISS CASE
10-14-14 [[75](#)]

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 14, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,500.00 delinquent in plan payments, which represents multiple months of the \$3,934.42 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

The Debtor filed an opposition stating that he would be current on his plan payments by the time of hearing. Debtor claims the delinquency is due to an increase of the home mortgage.

However, Debtors provide no evidence regarding payments made to become current and no modified plans have been filed. Therefore, the court has no evidence to consider in opposition to the motion.

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

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

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

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

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

16. [10-21448-E-13](#) RUFO/THELMA DELACRUZ MOTION TO DISMISS CASE
DPC-3 Stephen Reynolds 10-10-14 [[113](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 10, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 10, 2014. Dckt. 113.

The Trustee seeks dismissal of the case on the basis that Rufo and Thelma Delacruz ("Debtors") are \$9,170.44 delinquent in plan payments, which represents multiple months of the \$7,404.07 plan payment. Another monthly plan payment will be due by the hearing date. Failure to make plan payments is

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

DEBTORS' RESPONSE

Debtors filed their opposition to the Trustee's Motion on October 27, 2014. Dckt. 117. Debtors assert that they made a \$5,000.00 payment on October 27, 2014. Debtors further assert that they will pay \$2,404.07 before the end of October. Debtors plan to pay the delinquent \$9,170.44 over the four remaining months of their plan with payments of \$7,404.07 or \$9,830.09 per months for the months November 2014 through February 2015. FN.1. Debtors explained that they lost one of their board and care home's clients in October 2013 and were not able to replace this client until April 2014. The resulting loss of income is reflected in the partial plan payments made from that time to the present.

FN.1. Debtor's Opposition to Trustee's Motion to Dismiss states that the applicable period for the increase payments is "November 2014 through February 2014." The court understands this is likely a scrivener's error, considering that February 2014 has already come and gone.

TRUSTEE'S RESPONSE

The Trustee filed a response on November 3, 2014. Dckt. 121. The Trustee asserts that the Debtors should file a modified plan if they wish to increase plan payments over the last four months of the plan in order to keep creditors apprised of what Debtors intend to do to complete their plan.

DISCUSSION

With a delinquency in plan payments still outstanding, cause exists to dismiss this case. If the Debtors intend to cure this delinquency over the course of the next four months in the Plan, a modified plan must be filed to address this. Upon the court's review of the docket for this case, no such modified plan has yet been filed. The motion is granted and the case is dismissed.

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

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

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

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

17. [11-39249](#)-E-13 TROY/CATHERINE HICKMAN MOTION TO DISMISS CASE
DPC-5 C. Anthony Hughes 9-30-14 [[166](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. FN. 1.

FN.1. Notice was reissued on October 14, 2014 due to a delivery error however the second notice still meets the 28 day requirement.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,200.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 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

November 12, 2014 at 10:00 a.m.

- Page 21 of 56 -

the case is dismissed.

18. [09-47250](#)-E-13 DENNIS/CARLEY BATYE MOTION TO DISMISS CASE
DPC-2 Mary Ellen Terranella 10-10-14 [[74](#)]

Final Ruling: No appearance at the November 12, 2014 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.

19. [14-28950](#)-E-13 JANET LYTLE
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-9-14 [[33](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Janet Lytle ("Debtor"), Debtor's Attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 11, 2014. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 6, 2014).

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. Janet Lytle ("Debtor") paid the delinquent fees on October 21, 2014.

The court shall issue a minute order 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.

20. [11-23358](#)-E-13 JOHNNIE/CLAUDINE PUGH
DPC-2 C. Anthony Hughes

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE
8-15-14 [[70](#)]

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, and Office of the United States Trustee on October 10, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed a Notice of Default and Motion to Dismiss on August 15, 2014. Dckt. 70. After the court set the Notice for hearing, the Trustee filed a Response to the Notice on October 22, 2014. Dckt. 79.

The Trustee seeks dismissal of the case on the basis that Johnnie and Claudine Pugh ("Debtors") are \$13,365.96 delinquent in plan payments, which represents multiple months of the \$3,688.19 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtors have not responded to the notice, even after the Court sent a deadline to respond in its order setting the instant hearing.

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

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

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

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

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

21. [14-28958](#)-E-13 GEORGE AGUILAR
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-9-14 [[21](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on George Aguilar ("Debtor"), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 11, 2014. The court computes that 32 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 6, 2014).

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. Debtor paid his filing fees current on November 3, 2014.

The court shall issue a minute order 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

November 12, 2014 at 10:00 a.m.

- Page 25 of 56 -

in this court.

22. [14-28162](#)-E-13 DEMETRIUS HARDSON
Mikalalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-15-14 [[22](#)]

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 Demetrius Hardson ("Debtor"), Chapter 13 Trustee, and other parties in interest on October 17, 2014. The court computes that 26 day's 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 10, 2014.).

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

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

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

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

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

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

23. [14-27264](#)-E-13 DENNIS JACOPETTI
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-20-14 [[49](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Dennis Jacopetti ("Debtor"), Debtor's Attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 22, 2014. The court computes that 21 day's 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 (\$31.00 due on October 14, 2014).

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. Dennis Jacopetti ("Debtor") paid his installment fees current on October 22, 2014.

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

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

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

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

24. [13-25565](#)-E-13 SHERRIE WOLDRIDGE
DPC-1 Mikalah Liviakis

MOTION TO DISMISS CASE
10-15-14 [[45](#)]

Final Ruling: No appearance at the November 12, 2014 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.

25. [14-29065-E-13](#) ISAAH MARSH
DPC-1 David Foyil

MOTION TO DISMISS CASE
10-27-14 [[27](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 27, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 27, 2014.

The Trustee argues that Isaiah Marsh ("Debtor") did not commence making plan payments and is \$3,040.00 delinquent in plan payments, which represents a single month of the \$3,040.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on October 23, 2014. 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 January 8, 2015.

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 was required seven days before the Meeting of Creditors. 11 U.S.C. § 521(e)(2)(A)(1). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed opposition to this Motion. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

26. [14-27366-E-13](#) JESSE WILLIAMS
DPC-1 Helga White

MOTION TO DISMISS CASE
10-15-14 [[28](#)]

Final Ruling: No appearance at the November 12, 2014 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 15, 2014. 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 Motion to Dismiss on October 15, 2014. Dckt. 28.

The Trustee seeks dismissal of the case on the basis that Jesse Williams ("Debtor") is \$1,800.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. Another plan payment will be due before the hearing date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Cause exists to dismiss this case. Additionally, Debtor filed a Joinder in Trustee's Motion to Dismiss on October 23, 2014 that reflected Debtor's desire to dismiss his Chapter 13 case. The motion is granted and the case is dismissed.

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

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

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

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

27. 10-37069-E-13 AURELIO/HELEN CHAVEZ MOTION TO DISMISS CASE
DPC-1 John Tosney 10-10-14 [[54](#)]

Final Ruling: No appearance at the November 12, 2014 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 10, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, file the Motion to Dismiss on October 10, 2014. Dckt. 54.

The Trustee seeks dismissal of the case on the basis that Aurelio and Helen Chavez ("Debtors") are \$444.00 delinquent in plan payments, which represents multiple months of the \$222.00 plan payment. Before the hearing date, another monthly payment will be due. 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.	<u>10-43569</u> -E-13	SANDRA ROBERTS	MOTION TO DISMISS CASE
	DPC-4	Gary Ray Fraley	10-14-14 [<u>48</u>]

Final Ruling: No appearance at the November 12, 2014 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.

29. [13-29769](#)-E-13 JOHN JAMES
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
10-24-14 [[106](#)]

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 24, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 24, 2014.

The Trustee argues that John James ("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). The Trustee sent an email to Debtor's Counsel requesting that Debtor provide the Trustee with a copy of his 2013 tax return and updated income statements on April 28, 2014. On the same day, Julie Poletti, an assistant from Debtor's Counsel's office, responded and indicated that the office will contact Debtor and transfer the documents to the Trustee. On June 5, 2014, the Trustee received a copy of Debtor's extension to

file a 2013 tax return and income statements for April and May 2014. In October, the Trustee again emailed Debtor's Counsel regarding Debtor's 2013 tax return. Despite assurances from Counsel's office, the Trustee has not received the necessary tax documents. This is an 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 16, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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 27, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 28, 2014.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,146.00 delinquent in plan payments, which represents multiple months of the \$982.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 7, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor

offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

31. [14-26573](#)-E-13 PA LEE
DPC-2 Marc Caraska

MOTION TO DISMISS CASE
10-14-14 [[29](#)]

Final Ruling: No appearance at the November 12, 2014 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.

32. [10-49275-E-13](#) SAMUEL/ETHEL SMITH MOTION TO DISMISS CASE
DPC-4 William Bullis 9-30-14 [[52](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 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 Motion to Dismiss on September 30, 2014.

The Trustee seeks dismissal of the case on the basis that Samuel and Ethel Smith ("Debtors") are \$9,100.00 delinquent in plan payments, which represents multiple months of the \$3,275.00 plan payment. Another monthly payment will come due before the hearing 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 case is dismissed.

33.	09-42880 -E-13	RICHARD/ALYSSA POTTER	MOTION TO DISMISS CASE
	DPC-4	Timothy Walsh	10-14-14 [67]

Final Ruling: No appearance at the November 12, 2014 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.**

34. [09-46380-E-13](#) ROBERT/CYNTHIA BOWEN
DPC-2 Chinonye Ugorji

MOTION TO DISMISS CASE
10-10-14 [[215](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 10, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 10, 2014. Dckt. 215.

The Trustee seeks dismissal of the case on the basis that Robert and Cynthia Bowen ("Debtors") are \$11,076.00 delinquent in plan payments, which represents multiple months of the \$3,775.00 plan payment. Another plan payment will be due before the hearing date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTORS' RESPONSE

Debtors filed a response to the Trustee's Motion on October 29, 2014. Dckt. 219. Debtors state that they have made a payment of \$8,500.00 to the Trustee on October 21, 2014. Exh. A, Dckt. 220. Debtors further assert that they will make a payment to cover the remaining delinquency amount (\$6,351.00) on November 5, 2014.

Debtors state that they fell behind in plan payments because they were attempting to modify their Chapter 13 Plan, following a notice of mortgage payment change. Debtors still have the ability to complete their plan by

December 25, 2014, as scheduled.

DISCUSSION

The court notes that Debtors have begun to address the delinquent payments in this case. However, until the delinquency is completely cured, cause exists to dismiss this case. 11 U.S.C. § 1307(c)(1). 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. [14-28780](#)-E-13 CASEY WADE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-3-14 [[15](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Casey Wade ("Debtor"), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 5, 2014. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 29, 2014).

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. Casey Wade ("Debtor") paid his installment fee of \$77.00 on October 8, 2014.

The court shall issue a minute order 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.

36. 14-28780-E-13 CASEY WADE
DPC-2 Pro Se

MOTION TO DISMISS CASE
10-8-14 [[21](#)]

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 (*pro se*) and Office of the United States Trustee on October 8, 2014. By the court's calculation, 35 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 Motion to Dismiss on October 8, 2014. Dckt. 21.

The Trustee argues that Casey Wade ("Debtor") did not commence making plan payments. The case was filed August 29, 2014 and the plan calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on October 2, 2014. Attendance is mandatory. 11 U.S.C. § 343. Additionally, the Trustee does not have enough information to determine whether the plan is suitable for confirmation under 11 U.S.C. § 1325. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

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

Finally, the Trustee alleges that Debtor has not paid a \$77.00 installment for filing fees that was due on September 29, 2014. On review of the docket for this case, the court found that Debtor paid this fee on October 8, 2014, curing this deficiency.

Cause exists to dismiss this case in regard to the failure to commence plan payments, failure to appear at the Meeting of Creditors, and failing to provide both tax return documents and pay advices to the Trustee. Debtor has not filed any opposition to this Motion. 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.

November 12, 2014 at 10:00 a.m.

- Page 43 of 56 -

37. [14-27984](#)-E-13 ROSE RODRIGUEZ
Dale Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-9-14 [[26](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rose Rodriguez ("Debtor"), Debtor's attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 11, 2014. The court computes that 32 day's 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 6, 2014).

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. Rose Rodriguez ("Debtor") paid the delinquent filing fee in full on October 10, 2014.

The court shall issue a minute order 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. [14-27984](#)-E-13 ROSE RODRIGUEZ
DPC-2 Dale Orthner

CONTINUED MOTION TO DISMISS
CASE
9-30-14 [[22](#)]

Continued from 10-15-14

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 September 30, 2014. 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. At the hearing -----
-----.

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

FAILED TO COMMENCE PLAN PAYMENTS

The Trustee argues that the Debtor did not commence making plan payments and is \$5,056.72 delinquent in plan payments, with an additional \$5,056.72 coming due on October 25, 2014. The Plan in §1.01 calls for payments to be received by the Trustee no later than the 25th day of each month. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

FAILED TO APPEAR AT 341 MEETING

Further, the Trustee alleges that the Debtor did not appear at the

Meeting of Creditors held on September 4, 2014, pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee's Report of the continued First Meeting of Creditors states that neither Debtor nor Debtor's counsel appeared at the October 30, 2014 continued meeting. November 3, 2014 Docket Entry Report.

FAILURE TO PROVIDE TAX RETURNS

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).

FAILURE TO PROVIDE EVIDENCE

Schedule I in part calls for a monthly contribution from "wife's aunt" in the amount of \$1,200.00 on line 8h. Dckt.1, page 24. No evidence that Debtor is receiving the room rental income has been provided to the Trustee.

OCTOBER 15, 2014 HEARING

The hearing on the instant Motion was continued to November 12, 2014.

DISCUSSION

Nothing further has been filed in response to this Motion since the October 15, 2014 hearing. It appears that Debtor has not commenced her plan payments, provided the Trustee with her tax return documents, or provide evidence about room rental income. Further, the Trustee's Report for the continued Meeting of Creditors on October 30, 2014 shows that Debtor and Debtor's Counsel again failed to appear. 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. [14-28685](#)-E-13 STEVEN WARNOCK
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-2-14 [[16](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Steven Warnock ("Debtor"), Debtor's attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 4, 2014. The court computes that 39 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 29, 2014).

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. Steven Warnock ("Debtor") paid the delinquent filing fee in full on October 6, 2014.

The court shall issue a minute order 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.

40. [10-46287](#)-E-13 KENNETH/CHERYLN WINN
DPC-2 Scott Hughes

MOTION TO DISMISS CASE
9-30-14 [[85](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 43 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 Motion to Dismiss on September 30, 2014. Dckt. 85.

The Trustee seeks dismissal of the case on the basis that Kenneth and Cheryln Winn ("Debtors") are \$3,782.00 delinquent in plan payments, which represents multiple months of the \$1,100.00 plan payment. Another monthly plan payment will come due before the hearing date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtors have not filed an opposition to this Motion.

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

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

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

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

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

41. [14-27090](#)-E-7 JOHN MCCALL
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-14-14 [[42](#)]

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 John McCall ("Debtor"), Chapter 13 Trustee, and other parties in interest on October 16, 2014. The court computes that 27 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 7, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00, due on October 7, 2014.

The court shall issue a minute order 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.

42. [13-24993](#)-E-13 DENNIS/SANDRA CUVA
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
10-15-14 [[69](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 15, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on December 16, 2014.
--

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on October 15, 2014. Dckt. 69. The Trustee asserts that Dennis and Sandra Cuva ("Debtors") are in material default pursuant to section 5.03 of their plan. This section provides that the plan must complete in a period not to exceed 60 months. The Trustee's calculations show that the plan will complete in 278 months as opposed to the 60 months proposed.

Debtors' Plan confirmed on September 17, 2013 proposes to pay unsecured creditors 100% of their claims. Debtors' plan estimated that unsecured claims totaled \$11,285.62. This amount did not include the under-collateralized portion of secured claims in Class 2C. Unsecured filed claims total \$197,747.87. Debtors' monthly plan payment is \$2,700.00. After trustee's fees and Debtors' monthly contract installment are allocated, \$800.60 remains available to pay unsecured creditors on a monthly basis. The remaining approximate amounts to be paid total \$208,629.00, including secured principal and interest and unsecured claims. That total, divided by \$800.60 yields 261 months remaining to complete the plan. Debtors have completed 17 months of their plan to date, bringing the plan's overall duration to 278 months.

DEBTOR'S RESPONSE

Debtors state that they received a prior discharge of the unsecured portions of secured claims in Case No. 11-38896. While the claim has been filed, the payment of the unsecured portion should be limited to the mathematical calculation allowed by payments disbursed by the Trustee. Debtors request that the court allow the Debtors 30 days to file, set, and serve a new plan that decreases the percentage paid to unsecured creditors.

Debtors assert that a 100% plan is not otherwise required. Debtors do not have any non-exempt assets, nor were Debtors subject to a 100% plan based on the B22C form. The creditors holding unsecured claim numbers 4 and 5 have

been contacted regarding the fact that their claims had been discharged in the prior bankruptcy and both creditors have agreed to withdraw claims.

DISCUSSION

On November 7, 2014, Debtor filed a First Modified Plan. Dckt. 80. The basic terms of the proposed Plan are:

- A. Debtor shall make \$2,700.00 monthly plan payments for sixty months.
- B. The Claim secured by Debtor's residence is the subject to loan modification negotiations and provided in the Additional Provisions.
- C. The Class 2 Secured Claims provide for an aggregate \$525.00 monthly dividend.
- D. For Class 7 General Unsecured Claims, Debtor provides for a 3% dividend on a total of \$186,544.16 in such claims.

The Motion to Confirm the proposed First Modified Chapter 13 Plan may not comply with the requirement that it state with particularity (Fed. R. Bankr. P. 9013) the grounds for confirming a modified plan as required by 11 U.S.C. §§ 1329, 1325(a), and 1322. Such grounds stated in the Motion are:

- A. Debtor filed bankruptcy.
- B. Debtor confirmed a plan on September 17, 2013.
- C. Debtor cannot complete the confirmed plan due to unsecured claims being greater than projected.
- D. Debtor has paid \$48,600.00 into the confirmed plan to date.
- E. Debtor will "resume" making \$2,700.00 monthly plan payments in November 2014 for twenty-four months.
- F. The Plan term is sixty months.
- G. Debtor has paid the required fees, charges, or other required amounts.
- H. The First Modified Plan has been filed in good faith.
- I. The Modification modifies the rights of the holder of the Class 1 Claim, providing for adequate protection payments while Debtor pursues a loan modification.
- J. The modification reduces the unsecured dividend from 100% to 3%.

Dckt. 76.

On its face, the Motion indicates that there has been a default in the

plan payments, with them to "resume" in November 2014. It is not stated that the proposed First Modified Plan meets the Chapter 7 liquidation standard.

The evidence in support of the Motion may also be insufficient. Debtor provides testimony that modification is necessary because of several "changes/problems" they have encountered.. These factors "include," but would not appear to be limited to, the filed general unsecured claims being greater than Debtor projected at the commencement of the case. Declaration, Dckt. 78. Debtor offers no testimony as to how they so grossly understated the unsecured claims to be only \$11,285.62 (Chapter 13 Plan, Dckt. 51) and the actual \$186,544.16 (1,653% increase).

This case was filed on April 12, 2013, and Debtor now seeks to confirm a First Modified Plan nineteen months later. No current financial information is provided by Debtor. On July 12, 2013, Debtor filed Supplemental Schedules I and J. Dckt. 45. At that time Debtor stated monthly net income of \$4,448.54 (which included projected commissions from future work installing solar panels).

No provision is made on Amended Schedule J for any taxes arising from Debtor income generated from solar installation contracts - just income of \$1,840.00 a month. No provision is made for payment of self employment taxes from this business.

In reviewing Amended Schedule J the court notes that Debtor provides only \$5.00 a month for home maintenance, only \$5.55 for medical and dental expenses, and \$0.00 for business expenses. It appears that the expenses on Amended Schedule J have been "made as instructed" so as to achieve a preconceived \$2,700.00 monthly net income so as to "support" confirmation of the Chapter 13 Plan in 2013. (This is commonly called a "Liar Declaration" by the court.)

It may well be problematic whether Debtor can confirm the Modified Plan. However, the court affords Debtor, the Chapter 13 Trustee, and creditors to address such issues at confirmation.

The hearing on the Motion to Dismiss is continued to 3:00 p.m. on December 16, 2014, to be hear in conjunction with the Motion to Confirm the proposed First Modified Chapter 13 Plan.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on December 16, 2014.

43. [14-27793](#)-E-13 ROMY OSTER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-20-14 [[41](#)]

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 Romy Oster ("Debtor"), Chapter 13 Trustee, and other parties in interest on October 22, 2014. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 14, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00 due on October 14, 2014.

The court shall issue a minute order 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.

44. [14-27793-E-13](#) ROMY OSTER
DPC-2 Pro Se

MOTION TO DISMISS CASE
10-15-14 [[33](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 15, 2014. 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 Motion to Dismiss on October 15, 2014. Dckt. 33.

The Trustee alleges that Romy Oster ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on October 9, 2014. 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 December 11, 2014.

The Trustee argues that the Debtor did not commence making plan payments and is \$3,236.00 delinquent in plan payments, which represents multiple months of the \$1,618.23 plan payment. Another monthly plan payment is due before the hearing date. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The 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). Both of these materials were required to be provided to the trustee seven days before the First Meeting of Creditors. This is unreasonable delay which is prejudicial to creditors. 11

U.S.C. § 1307(c)(1). Debtor filed no opposition to this Motion.

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

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

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

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

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

45. [14-28099](#)-E-13 YASWANT/KAMINI SINGH MOTION TO DISMISS CASE
DPC-3 Len ReidReynoso 10-8-14 [[33](#)]

Final Ruling: No appearance at the November 12, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 8, 2014. By the court's calculation, 35 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 Motion to Dismiss on October 8, 2014. Dckt. 33.

The Trustee alleges that Yaswant and Kamini Singh ("Debtors") did not

appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 held on September 11, 2014 and October 2, 2014. 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 was continued to December 4, 2014.

The Trustee argues that the Debtors did not commence making plan payments and are \$3,188.00 delinquent in plan payments. Another monthly payment of \$3,188.00 will come due before the hearing date. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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