

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

**December 3, 2014 at 10:00 a.m.**

---

1.     [13-26747](#)-C-13     RUSSELL/CHERYL DOUGLAS     MOTION TO DISMISS CASE  
          DPC-1             Stephen M. Reynolds         10-29-14   [\[33\]](#)

**Final Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal on November 21, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

**December 3, 2014 at 10:00 a.m.**

**Final Ruling:** No appearance at the December 3, 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 29, 2014. By the court's calculation, xx 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 Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is in material default under the terms of the confirmed plan. Debtor did not provide for the priority part of the claim of the Franchise Tax Board (Claim 4) in the amount of \$4,701.57.
2. According to the Trustee's calculations, the plan will complete in 153 months, as opposed to 60 months. 11 U.S.C. § 1322(d).

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

**December 3, 2014 at 10:00 a.m.**

Dismiss is granted and the case is dismissed.

**Final Ruling:** No appearance at the December 3, 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 30, 2014, 2014. By the court's calculation, xx days' notice was provided. 28 days' notice is required. That requirement was met.

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 Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is in material default under the terms of a confirmed plan because debtor is delinquent \$1,800 in plan payments.
2. Debtor filed a motion to modify the plan, that was granted on April 16, 2013. The modification increased Debtor's payments from \$510 per month to \$600 per month. The delinquency appears to be due to debtor not increasing payments to \$600 per month per the amended plan (Dkt. 59).

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

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

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

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

good cause appearing,

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

4.     [13-26080](#)-C-13   SCOTT ROBERTS                               MOTION TO DISMISS CASE  
DPC-1               Douglas P. Broomell                       10-29-14 [[34](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal on November 21, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

5. [14-29892](#)-C-13 EDUARDO JIMINEZ  
Thru #6 Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-6-14 [[16](#)]

**Final Ruling:** 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 November 3, 2014). The court docket reflects that on November 12, 2014, Debtor paid the fees upon which the Order to Show Cause was based.

**The Order to Show Cause is discharged.** No appearance required on Order to Show Cause.

The fees having been paid, the Order to Show Cause is discharged. The court is granting Trustee's simultaneously pending Motion to Dismiss and the court will be holding oral argument on that Motion.

The court shall issue a minute order 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 are ordered, and the  
case shall proceed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on November 10, 2014. Fourteen days' notice is required. That requirement was met.

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 -----  
-----.

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on November 6, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The continued meeting is set for January 22, 2015.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-



petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (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.