

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

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

1. [09-33101](#)-E-13 JACCIE VANG
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
11-7-14 [[96](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jaccie Vang ("Debtor"), Debtor's counsel, Chapter 13 Trustee, U.S. Bank National Association ("Creditor"), and Creditor's counsel on November 7, 2014. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees for Transfer of Claim in this case (\$25.00 due on October 14, 2014).

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

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

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

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

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

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

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

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 17, 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 grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss this case on September 17, 2014. Dckt. 49. The Trustee seeks to dismiss the case on the basis that John Moore ("Debtor") is in material default of his Plan. Debtor's confirmed Plan includes a Monthly Contract Installment Amount of \$1,030.00 in Class 1. The amount was changed to \$1,271.48 in January 2014 per the November 19, 2013 Notice of Mortgage Payment Change filed by creditor Wells Fargo Bank, N.A. The creditor has filed another Notice of Mortgage Payment Change on August 13, 2014, which will increase the installment amount to \$1,511.29 in September 2014. Debtor's current monthly plan payment of \$1,566.00 is not sufficient to pay the monthly contract installment amount, the Class 1 arrearage dividend, and the attorney and trustee fees dividends.

DEBTOR'S OPPOSITION

Debtor filed an opposition to this Motion on September 29, 2014. Dckt. 53. Debtor states that Wells Fargo Bank, N.A. filed an amended Proof of Claim on August 28, 2014 which lowered the amount of pre-petition arrears on the mortgage. Wells Fargo Bank, N.A. has also filed two Notice of Mortgage Payment Changes, the most recent filed on August 13, 2014 to take effect September 1, 2014. Debtor is paying his mortgage through Class 1 of his confirmed Plan. The

increase in mortgage amount requires a modified plan to be filed and set for hearing. Debtor states that he and his counsel have prepared a First Modified Chapter 13 Plan and anticipate that it will be filed before the hearing on this Motion.

OCTOBER 15, 2015 HEARING

The court continued the hearing to allow Debtor to file and serve the amended plan and motion to confirm on or before November 14, 2014.

DISCUSSION

The court has reviewed the docket for this case. At this time, no Modified Plan has been filed. Without a modified plan, the Debtor remains in default of his confirmed plan. Defaulting on a Chapter 13 Plan is grounds for dismissal. 11 U.S.C. § 1307(c)(6). Debtor has filed a motion to extend time for an additional seven (7) days to file the amended plan and motion to confirm. Dckt. 56.

On November 19, 2014, Wells Fargo Bank, N.A. filed a new Notice of Mortgage Payment Change, which states that the monthly payment amount beginning December 15, 2014, is \$1,510.00. November 19, 2014 filing on Docket in this case.

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

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

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

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

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

3. [14-29909](#)-E-13 PAUL KELLY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-7-14 [[16](#)]

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 Paul Adan Kelly, "Debtor," Trustee, and other parties in interest on November 7, 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 November 3, 2014.

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

The court's docket reflects that the default in payment which is the subsection 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.

4. [14-29909](#)-E-13 PAUL KELLY
DPC-2 Pro Se

MOTION TO DISMISS CASE
11-10-14 [[22](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on November 10, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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 this Motion to Dismiss on November 10, 2014. Dckt. 22.

FAILURE TO APPEAR AT 341 MEETING

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held on November 6, 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).

FAILURE TO PROVIDE PAY STUBS/TAX RETURNS

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

5. [14-27914](#)-E-13 DALVON BOLDS
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-4-14 [[30](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Dalvon Bolds, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on November 4, 2014. The court computes that 29 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 30, 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.

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.

6. [10-39217](#)-E-13 STEPHEN/ELIZABETH DICKSON MOTION TO DISMISS CASE
DPC-2 Guy David Chism 10-31-14 [[193](#)]

Final Ruling: No appearance at the December 3, 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.**

7. [14-27117](#)-E-13 ANTHONY/GWENDOLYN LAND MOTION TO DISMISS CASE
DPC-2 Scott Johnson 10-28-14 [[48](#)]

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 27, 2014. By the court's calculation, 37 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 this Motion to Dismiss on

October 27, 2014. (Dckt. 48).

PRIOR PLAN DENIED, NO NEW PLAN

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).

OPPOSITION

Debtor has replied to this motion by stating that along with their attorney they have been reviewing bank records and intend to file prior to the hearing. However, a review of the docket shows that no such filing has taken place.

Because the Debtor has not filed a plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

8.	13-26718-E-13 ESPERANZA ZAVALA	MOTION TO DISMISS CASE
	DPC-1 Peter Macaluso	10-29-14 [60]

Final Ruling: No appearance at the December 3, 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.**

9. [14-24924-E-13](#) EKOW-YARTEL CUDJOE
DPC-2 Mikalah Liviakis

MOTION TO DISMISS CASE
10-28-14 [[30](#)]

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 27, 2014. By the court's calculation, 37 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 this Motion to Dismiss on October 27, 2014. (Dckt. 30).

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.

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

- Page 10 of 32 -

10. [14-22527](#)-E-13 MARK/PATRICIA HARLAND
DPC-1 Joseph Canning

MOTION TO DISMISS CASE
10-28-14 [[38](#)]

Final Ruling: No appearance at the December 3, 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.**

11. [14-30130](#)-E-13 MICHAEL/MARCIA CLARK
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-14-14 [[21](#)]

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 Michael and Marcia Clark ("Debtors"), Debtors' Attorney, Chapter 13 Trustee, and other parties in interest on November 16, 2014. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on November 10, 2014).

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

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

12. [10-53637](#)-E-13 G./KATHLEEN ULBERG
DPC-2 John Downing

MOTION TO DISMISS CASE
11-3-14 [[180](#)]

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 Debtors, Debtors' Attorney, and Office of the United States Trustee on November 3, 2014. By the court's calculation, 30 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 G. Wendell and Kathleen Ulberg ("Debtors") are \$15,000.00 delinquent in plan payments, which represents multiple months of the \$2,750.00 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

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

- Page 12 of 32 -

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. [14-28651](#)-E-13 KATHY TANNEHILL
DPC-1 Pro Se

MOTION TO DISMISS CASE
11-4-14 [[20](#)]

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 November 4, 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.
--

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

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

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

Finally, the Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay 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. [10-20455](#)-E-13 TODD/JUDY LINDENMUTH
DPC-9 Mark Wolff

MOTION TO DISMISS CASE
11-4-14 [[190](#)]

Final Ruling: No appearance at the December 3, 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.

15. [14-27755](#)-E-13 ANTHONY FURR
DPC-2 Richard Jare

MOTION TO DISMISS CASE
10-28-14 [[93](#)]

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 27, 2014. By the court's calculation, 37 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 Trustee's Motion argues that Anthony Furr ("Debtor") did not file an Amended Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on October 7, 2014. Dckt. 75.

DEBTOR'S OPPOSITION

Debtor filed opposition to this Motion on November 19, 2014. Dckt. 113. Debtor states that he has filed a new plan on October 25, 2014.

DISCUSSION

A review of the docket shows that Debtor did file a new plan on October 25, 2014. However, this plan was filed on its own, without an accompanying motion to confirm a plan, certificate of service, or notice of hearing for the plan's confirmation. These documents were later filed on November 14, 2014. This cures the prejudicial delay under 11 U.S.C. §1307(c)(1) upon which the Trustee based his Motion.

Cause no longer exists to dismiss this case. The motion is denied and the case will continue in this court.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied and the case will continue in this court.

16. [14-28958](#)-E-13 GEORGE AGUILAR
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-10-14 [[31](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on George Aguilar ("Debtor") Trustee, and other parties in interest on November 10, 2014. The court computes that 23 days' notice has been provided.

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

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

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

17. [14-28958-E-13](#) GEORGE AGUILAR
DPC-2 Pro Se

MOTION TO DISMISS CASE
11-4-14 [[27](#)]

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 November 4, 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.
--

The Trustee alleges that George Aguilar ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on October 16, 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 Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that the Debtor did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Another monthly payment 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

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

- Page 18 of 32 -

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.

18. [13-21559](#)-E-13 EARL MILLER
DPC-1 Timothy Walsh

CONTINUED NOTICE OF DEFAULT AND
APPLICATION TO DISMISS CASE
6-16-14 [[22](#)]

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

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

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

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

Correct Notice Provided. The BNC Certificate accompanying the Notice of Default and Application to Dismiss states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,825.00 delinquent in plan payments, which represents one month of the \$6,825.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Counsel for Debtor requests a hearing to oppose Trustee's Notice of Default and Application to Dismiss. Counsel states that Debtor has suffered from a stroke and was admitted to the Kaiser Foundation Rehabilitation Center from May 22, 2014 through May 30, 2014. Counsel for Debtor states that the Center provided a letter that Debtor will be unable to return to work for at least three months and needs supervision and assistance with his daily living activities. Debtor states he is attempting to withdraw funds from his retirement to catch up on the plan payments.

TRUSTEE'S RESPONSE

Trustee responds stating:

- 1) A Notice of Default and Application to Dismiss (DPC-1) (Dckt. 22) was filed and served on June 17, 2014 for a delinquency of \$6,825. An additional payment of \$6,825 was due on June 25, 2014, with a total of \$13,650 due within 30 days from the date of the service of the notice.
- 2) On June 25, 2014, the Debtor filed an opposition (Dckt. 24) to the Notice of Default and Application to Dismiss, and has not filed a modified plan seeking to change the plan.
- 3) Debtor suffered a stroke and was admitted into the Kaiser Foundation Rehabilitation Center from May 22, 2014 through May 30, 2014. He is diagnosed not to return to work for at least 3 months.
- 4) The Debtor does not dispute that his plan has fallen delinquent.

The Debtor seeks to prevent the motion to dismiss but does not proceed with a motion to modify. The Debtor has not cured the default, does not dispute the default, and is not attempting to modify their plan.

JULY 9, 2014 HEARING

The court continued the hearing on this Motion to 10:00 a.m. on October 15, 2014 to allow Debtor to continue his attempts to get a disbursement from his deferred compensation and disability.

OCTOBER 15, 2014 HEARING

The court continued the hearing to December 3, 2014 to allow Debtor to determine whether a plan similar to the one Debtor currently has will be feasible.

DISCUSSION

No further pleadings have been filed in this case. Debtor has also not filed a modified plan and associated motion. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

19. [14-28162](#)-E-13 DEMETRIUS HARDSON
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-14-14 [[33](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Demetrius Hardson ("Debtor") Trustee, and other such other parties in interest as stated on the Certificate of Service on November 16, 2014. The court computes that 17 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on November 10, 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 on November 17, 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. [14-29065](#)-E-13 ISAIAH MARSH
David Foyil

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-13-14 [[51](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The case having previously been dismissed, the Order to Show Cause 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 Order to Show Cause 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 Order to Show Cause is dismissed as moot, the case having been dismissed.

21. [14-29672](#)-E-13 MARINA ARZUMANOVA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-3-14 [[22](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Marina Arzumanova ("Debtor"), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on November 5, 2014. The court computes that 28 days' notice has been provided.

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

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.

22. [14-28780](#)-E-13 CASEY WADE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-3-14 [[36](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The case having previously been dismissed, the Order to Show Cause 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 Order to Show Cause 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 Order to Show Cause is dismissed as moot, the case having been dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on November 4, 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 deny the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on November 4, 2014. Dckt. 28. The Trustee seeks to dismiss this case on the basis that:

1. Raven Trammell ("Debtor") has failed to provide the Trustee with a tax transcript or a copy of her Federal Income Tax Return for the most recent pre-petition tax year for which one was due.
2. Debtor has not provided the Trustee with 60 days of employer pay advices received prior to the petition filing date.
3. Debtor failed to provide proof of social security number at the First Meeting of Creditors held on October 16, 2014.

DEBTOR'S OPPOSITION

Debtor filed her opposition to the Motion on November 13, 2014. Dckt. 35. Debtor states that she mailed her 2012 and 2013 tax returns to the Trustee on November 4, 2014. Debtor also mailed pay advices from July 2014 and August 2014 on November 4, 2014, after she had received them from her Human Resources department. Debtor applied for a duplicate Social Security card on November 3,

2014 and Debtor expects to receive it before the hearing on confirmation of her plan on November 18, 2014.

TRUSTEE'S RESPONSE

The Trustee confirmed receipt of Debtor's tax returns and pay advices. The Trustee also confirmed receipt of a photocopy of Debtor's Social Security card, but requests that the matter remain on the calendar so Debtor can present the original card with photo identification.

DISCUSSION

It appears that Debtor has cured the conditions on which the Trustee based his Motion to Dismiss. Provided Debtor can show the Trustee the original Social Security card at the hearing, the Motion will be denied.

Cause no longer exists to dismiss this case. The motion is denied and the case will continue in this court.

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

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

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

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

24. [13-27085](#)-E-13 STEVE/KARI AICHER
DPC-1 Scott Hughes

MOTION TO DISMISS CASE
10-29-14 [[54](#)]

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 Debtors, Debtors' Attorney, and Office of the United States Trustee on October 29, 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 29, 2014. Dckt. 54. The Trustee seeks to dismiss this case because Steve and Kari Aicher ("Debtors") are in material default on their plan. Debtors failed to provide for the priority part of the Franchise Tax Board's claim in the amount of \$2,899.13. Claim No. 6. This contradiction section 2.13 of the plan that requires all priority debts to be provided for in the Plan. This is grounds to dismiss this case. 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

25. [14-30186](#)-E-13 EVANGELINA GARIBAY
Charnel James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-10-14 [[25](#)]

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 Evangelina Garibay ("Debtor"), Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on November 12, 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 (\$30.00 due on October 28, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$30.00.

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

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

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

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

26. [14-29688](#)-E-13 MARVIN/DARYL GARDNER
Julius Engel

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-4-14 [[20](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Marvin and Daryl Gardner ("Debtors"), Debtors' Attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on November 6, 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 30, 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 on November 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.

27. [10-32091](#)-E-13 KIM/KIMBERLY GOWENLOCK
DPC-1 Lars Fuller

MOTION TO DISMISS CASE
11-4-14 [[55](#)]

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 November 4, 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.

David Cusick, the Chapter 13 Trustee, filed the Motion to Dismiss on November 4, 2014. Dckt. 55. The Trustee seeks to dismiss this case because Kim and Kimberly Glowenlock ("Debtors") are delinquent \$1,030.00 in plan payments. Before the hearing date, another monthly payment of \$515.00 will be due.

DEBTORS' OPPOSITION

Debtors filed opposition to this Motion on November 19, 2014. Dckt. 59. Debtors state that they have experienced cash flow problems due to loans Debtors originate failing to close. Debtors plan to have the delinquent amount paid by the hearing date or mid-December at the latest.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,030.00 delinquent in plan payments, which represents multiple months of the \$515.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Although Debtors promise to pay the delinquency, the court must dismiss this case because there is no evidence that the delinquency has been cured.

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

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

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

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

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

28. 14-20091-E-13 MARLENE MCCRARY
DPC-1 Douglas Jacobs

MOTION TO DISMISS CASE
11-4-14 [[57](#)]

Final Ruling: No appearance at the December 3, 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. [14-29493](#)-E-13 RODNEY/CHANDRA LAMBERT
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-28-14 [[74](#)]

Final Ruling: No appearance at the December 3, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Rodney and Chandra Lambert ("Debtors"), Debtors' Attorney, Chapter 13 Trustee, and other such other parties in interest as stated on the Certificate of Service on October 30, 2014. The court computes that 34 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 23, 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 on November 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.