

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 8, 2014 at 10:00 a.m.

1. 09-46400-E-13 ELSA OWENS MOTION TO DISMISS CASE
NLE-1 Scott Coben 12-9-13 [[50](#)]

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 December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Chapter 13 Trustee moves the court to dismiss the case pursuant to 11 U.S.C. § 1307(c) because the Debtor is in material default. The Debtor failed to provide for the priority claim of the Franchise Tax Board (Claim No. 11) in the amount of \$243.74.

Furthermore, the Trustee argues that the Debtor cannot make plan payments as required under 11 U.S.C. § 1325(a)(6). The Trustee offers evidence that the Debtor is \$520.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor responds, stating that she will be filing a modified plan prior to the hearing on this Motion that addresses the Trustee's concerns.

However, no modified plan has been filed to date.

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:

January 8, 2014 at 10:00 a.m.

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. 13-34303-E-13 **RAYMOND CLIFFORD AND** **ORDER TO SHOW CAUSE - FAILURE**
 RHONDA WILSON **TO PAY FEES**
 David Ndudim **12-12-13 [16]**

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on December 9, 2013). The court docket reflects that on December 18, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

The fees having been paid, the Order to Show Cause is discharged.

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.

3. [13-27106-E-13](#) MARK RUBENDALL
NLE-2 David Foyil

MOTION TO DISMISS CASE
12-9-13 [[50](#)]

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 December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$440.00 delinquent in plan payments, which represents multiple months of the \$220.00 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 November 5, 2013.

Debtor responds, stating that he has not filed a new chapter 13 plan because he was trying to decide if he could afford a higher payment. Debtor states that he has decided to move for the case to be converted to one under Chapter 7 of the Bankruptcy Code and will be filing an application.

A review of the docket shows that Debtor has not yet filed a new plan or an election to convert the case to one under Chapter 7. 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.

5. [13-28807-E-13](#) CHRISTOPHER/ANGELA
TSB-2 JOHNSON
Scott Johnson

MOTION TO DISMISS CASE
11-26-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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). 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).

The Motion to Dismiss is granted and the case is dismissed. 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 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 10, 2013.

A review of the docket shows that Debtor filed a new Plan on December 4, 2013 and set a Motion to Confirm a Plan for hearing on January 14, 2013.

However, Debtor has not provided a response to this Motion, which was set on the notice provided in Local Bankruptcy Rule 9014-1(f)(1), which requires a written response 14 days before the hearing. Debtor offers no written response or explanation for the delay in setting the Plan for confirmation. The opposition to this motion was due by December 24, 2013. Since that is well after the filing of the Motion to Confirm an Amended Plan. It appears that the Debtors realized that they would be unable to perform the amended plan and elected to default on this Motion.

In reviewing the proposed plan, it provides for only a \$150.00 a month payment. On Schedule I, the Debtors state under penalty of perjury that they have \$8,7449.26 in gross monthly income for a family of six persons. Dckt. 1. The Debtors report that they are over-median income debtors on Form 22C. *Id.* at 42-43.

The sixty \$150.00 monthly plan payments would total \$9,000.00. Of

this \$2,481.00 is to be paid to Debtors' counsel and \$540.00 to the Chapter 13 Trustee (projected 6% trustee fees). No other creditors are provided to be paid through the plan. Though it appears that there would be monies for payment of general unsecured claims, the Debtors merely provide for a dividend of "no less than 0%." Though it appears that there would be at least an 8% dividend, the Debtors "promise" nothing. Such is indicative of Debtors who do not believe they can make the plan payments, ultimately deciding to have their case dismissed on the Trustee's motion.

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.

6. [13-29907-E-13](#) SYAMPHAI LIEMTHONGSAMOUT MOTION TO DISMISS CASE
TSB-1 Scott Shumaker 11-26-13 [[34](#)]

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 November 26, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to deny the Motion to Dismiss. No appearance at the January 8, 2014 hearing is required.

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 8, 2013.

Debtor responds, stating that a Motion to Confirm an Amended Plan will be filed no later than December 31, 2013.

A review of the docket shows that Debtor filed a new plan and a motion to confirm a plan on December 31, 2013. The Motion appears to comply with Fed. R. Bankr. P. 9013 and is supported by a substantial declaration provided by the Debtor. Therefore, cause does not exist to dismiss this case.

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

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

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

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

7. [13-32113](#)-E-13 ANTHONY/STACY MCKINNEY

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
12-3-13 [[29](#)]

CASE DISMISSED 12/18/13

Final Ruling: 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.

8. [13-30914](#)-E-13 MICHAEL SIMMS
Peter Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-25-13 [[49](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$69.00 due on November 18, 2013). The court docket reflects that on December 10, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

The fees having been paid, the Order to Show Cause is discharged.

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.

9. [13-30919](#)-E-13 BUN AUYEUNG AND SOO TSE MOTION TO DISMISS CASE
TSB-1 Peter Macaluso 12-16-13 [[84](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 16, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$13,000.00 delinquent in plan payments, which represents multiple months of the \$300.00 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.

10. [12-35521](#)-E-13 CHRISTOPHER DEAN
NLE-1 Peter Macaluso

MOTION TO DISMISS CASE
12-9-13 [[148](#)]

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 December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on March 19, 2014. No appearance at the January 8, 2014 hearing is required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,400.00 delinquent in plan payments, which represents multiple months of the \$2,200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor responds, stating that Debtor's Chapter 13 proposes to retain the real property and an Adversary Proceeding has been commenced. Counsel states that he has sent a Stipulation to the Homeowner's Association to restore title of the residence to Debtor, cure the arrears and allow possession to the Debtor so that he can prosecute this case. Counsel states that additional negotiations are continuing as to how to handle the post-petition arrears.

The Adversary Proceeding is being actively prosecuted, and if a stipulation is achieved, a number of issues can be resolved - including the Debtor retaining the property if he can cure the arrearage which is secured by the property.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 on March 19, 2014.

11. [13-30221](#)-E-13 MICHAELA VAN DINE AND ORDER TO SHOW CAUSE - FAILURE
PIOTR REYSNER TO PAY FEES
12-11-13 [[74](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$141.00 due on October 30, 2013 and December 2, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

The court's tentative decision is to sustain the Order to Show Cause and order the case 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 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 sanctions are issued pursuant thereto, and the case is dismissed.

12. [13-34222-E-13](#) ISAAC WILSON
TSB-1 Pro Se

MOTION TO DISMISS CASE
12-13-13 [[29](#)]

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 December 13, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Lastly, the Trustee states that the Debtor fails to disclose two prior filings on the petition, case numbers 13-20011 and 12-32385. These two cases were dismissed based on the same grounds as stated above - failure to attend the 341 Meeting of Creditors and failure to provide income tax returns and pay advices.

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. [12-26623](#)-E-13 NAVRAJ/INDU JASUJA MOTION TO DISMISS CASE
NLE-1 Peter Macaluso 12-3-13 [[117](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to deny without prejudice the Motion to Dismiss. 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 Chapter 13 Trustee moves to dismiss this case pursuant to 11 U.S.C. § 1307(c) because Debtor is in material default. Trustee argues that Debtor has not provided for the priority claim of the Employment Development Department, Claim No. 27 in the amount of \$172.53, which is a breach under § 2.13 of the plan. Furthermore, Trustee states that Debtor has admitted to selling property without approval of the Court. Local Bankruptcy Rule 3015-1 does not allow the sale of property without Court authorization, and the plan under §5.02 provides that these duties are imposed on the

Debtor in addition to the Bankruptcy Code and Rules, and the Debtor has not complied with this duty, breaching the plan.

Additionally, the Trustee argues that the Debtor has admitted to paying American Express directly \$5,500.00 plus \$137.50 per month. American Express has filed various unsecured claims and the plan calls for unsecured claims to receive no less than 1.82%, and does not specify that the Debtor will make such payments as it allows for Class 4 claims. The Trustee also states that the Debtor previously admitted to non-exempt equity in their Exhibit in support of confirmation.

DEBTORS' OPPOSITION

Debtor responds, stating that they are current with the payments, which increased by \$6,240.00, after utilizing exempt funds from the unauthorized sale to pay a non-dischargeable claim pursuant to 11 U.S.C. § 523, attempting to remedy the Trustee's motion.

Debtor further argues that the "punishment" of the Debtors should be the surcharge of the exempted funds from the sale as this is a benefit to the filed creditors as these funds which are a windfall to the estate, as a conversion or dismissal, it would not directly benefit those creditors who have participated in this Chapter 13.

For the Opposition, the Debtors provide their declaration, stating under penalty of perjury,

- A. Debtor and other family members started a business known as "Tandoori Hut."
- B. Due to heavy debt, the Debtors filed bankruptcy.
- C. While in this bankruptcy case, Debtor attempted to keep the restaurant "afloat."
- D. Indu Jasuja, one of the debtors, cut back her work hours, instead working at the restaurant 2-3 days a week.
- E. As the bankruptcy progressed, the other family members "started losing interest in running the restaurant" and "family quarrels ensued."
- F. Additionally, a competing restaurant opened up across the intersection from the Debtor's restaurant.
- G. As the family members became more frustrated, Debtor sought to obtain court approval to sell the restaurant, which motion was denied.
- H. Though Debtor had a buyer, the second motion for order approving the sale was denied.
- I. The family members started walking off from the business, leaving both Debtors unable to operate the restaurant and work their jobs.

- J. Unable to obtain court approval, the Debtors chose to sell the restaurant because it was financially advantageous.
- K. The Debtors now regret having sold the restaurant without court approval, stating that "We did not realize the consequences it might lead to."
- L. Debtors also state that they "did not intend to violate any rules, nor intend to mislead anyone."
- M. The Debtors plead with the court to allow them to carry on with their current version of a Chapter 13 Plan.

Declaration, Dckt. 131.

DISCUSSION

The present Motion presents the court with a very unpleasant situation. While Debtors throw themselves on the "mercy of the court," they appear to do so because that is their most advantageous alternative. As with knowingly selling the restaurant without court authorization because it was in their financial advantage, Debtors and their attorney now seek to cover up Debtors' misdeeds.

In denying the first motion to sell the court addressed the motion that incorrectly identified the asset being sold. Civil Minutes, DCN: PGM-2, Dckt. 59. The first motion proposed to sell the real property (which the Debtors do not own) at which the restaurant was located. In denying the Motion, the court stated,

"This Motion is fatally defective as it does not identify the property to be sold. The Notice of Hearing is fatally defective because it misidentifies the property being sold. If the Debtors wish to sell their business and the personal property of the business then they may file a motion to sell those personal property assets, with that motion actually identifying what is to be sold (and not merely generically describing the assets as business and inventory."

Id.

In denying the second motion to sell, the court's findings of fact and conclusions of law reviews the incomplete and inaccurate statements made by the Debtors under penalty of perjury. Civil Minutes, DCN: PGM-4, Dckt. 75. Only when pressed, these Debtors began disclosing bank accounts and other assets. In discussing the Debtors' lack of credibility, the court stated (emphasis added),

"The undisclosed assets, the multiple amended Schedules, and the failure to disclose payment of property taxes on the eve of bankruptcy significantly impair the Debtors' credibility. The Debtors state under penalty of perjury in the Schedules that the business only has a liquidation value of \$12,000.00 and no goodwill value. For the current sale, the value has

risen sufficient to sell it for \$20,000.00, with the buyer paying \$3,000.00 for goodwill. **Not coincidentally, the additional values are just enough to pay what the Debtors identify as sale expenses so that they can claim a new exemption in the remaining net proceeds of just less than \$12,000.00** (the amount of the exemption claimed in the business, including the tools of the trade exemption).

The testimony and Purchase Agreement provided to the court is devoid on any information as to the purported \$5,735.00 costs of sale and the \$3,000.00 in purported taxes.

Fortunately, from the Debtors' perspective, this works out to be exactly the number of expenses and taxes so that the remaining net proceeds can be within the re-reamed exemption amounts previously stated by the Debtors. The court does not find the Debtors' testimony as to the expenses and taxes to be credible.

The court will not approve a sale which purports to authorize the payment of unidentified expenses and taxes. Further, the court will not approve a sale that may purport to authorize the Debtors to claim the proceeds as exempt. **The Debtors have filed a blizzard of amended schedules, including amended exemptions. Further, the amended schedules have disclosed cash accounts for which no plausible explanation has been provided for the failure to disclose when the case was filed or earlier in these proceedings.**

Finally, **the court has no idea what assets are being sold.** The motion sees to sell generically described assets consisting of "business inventory, equipment and goodwill located in the property commonly known as 7467-69 Village Parkway, Dublin, California." Dckt. 62. The court has no idea if the inventory consists of two boxes of salt, three chickens, and a bottle of pepper, or a freezer full of food to prepare a banquet for 200 persons. Additionally, the equipment could consist of a one burner stove, hot plate, to pans, and a spatula, or may be a 14 burner Wolf stove, six oven, three walk in freezers, three stainless steel work tables with built in sinks and disposals.

The Business Purchase Agreement states that a list of the equipment being sold is attached, but that disclosure has been omitted from the Exhibit A filed with the court. Dckt. 65. Further, though not disclosed in the Motion, the Business Purchase Agreement allocates \$2,000.00 for the Debtors and estate not to compete within 5 miles of the Dublin, California location of the business being sold.

The court cannot issue an order which effectively states that the Debtors may sell the "Stuff" used in the business. That is what has been requested by the Debtors. The court also will not approve a sale and blindly parrot purported

expenses merely because the Debtors say that such expenses exist."

Id. From the above Ruling, it was abundantly clear to the Debtors that truthfulness, honesty, and forthright communications are required of the Debtors.

The Debtors, being unsuccessful at getting an order from the court to sell property of the estate due to their lack of disclosure and candor, chose to dispense with complying with the Bankruptcy Code. Being represented by knowledgeable counsel, there is little argument that the Debtors did not know that court approval was required and that absent court approval these fiduciaries of the bankruptcy estate could not sell or transfer these assets. That did not deter them from violating the Bankruptcy Code and getting what they wanted – cash from the unauthorized sale of property of the estate.

Local Bankruptcy Rule 3015-1 requires that the "debtor shall not transfer, encumber, sell or otherwise dispose of any personal or real property with a value of \$1,000.00 or more other than in the ordinary course of business without prior Court authorization."

The Chapter 13 Debtor is vested under 11 U.S.C. § 1303 with identical rights and powers as those of a trustee by virtue of 11 U.S.C. § 363(h) and may therefore sell property under 11 U.S.C. § 363(b) and (f). Where a sale of property of the estate of a debtor is not in the ordinary course of debtor's business, court approval of the sale is required. 11 U.S.C. §§ 363(b)(1) and 1303. It is universally accepted that the terms of a proposed sale not in the ordinary course must be disclosed to the court and to all creditors and parties in interest.

Courts have held transfers in violation of 11 U.S.C. § 363(b) are void ab initio and must be set aside. See *In re Koneta*, 357 B.R. 540, 543 (Bankr. D. Ariz. 2006) (Where Chapter 13 debtor and tenants of certain commercial property modified post-petition option agreement giving tenants option to purchase property, modification, which reduced purchase price and altered payment terms, was void because it was outside ordinary course of business and was not approved by court under 11 U.S.C. § 363(b)); *Medical Malpractice Ins. Ass'n v. Hirsch (In re Lavigne)*, 114 F.3d 379 (2d Cir. N.Y. 1997) *affd.* 114 F.3d 379 (2nd Cir. 1997) (Chapter 11 Debtor-in-possession's attempt to cancel an insurance policy which constituted property of the estate, without notice to interested parties was null and void); *In re First International Services Corp.*, 25 B.R. 66, 70 (Bankr. D. Conn. 1982) (The secret transfer of management and control of the debtor corporation runs counter to the spirit of the Bankruptcy Code and under such circumstances, the entire agreement must be deemed null and void).

In a very similar unreported case, *In re Corum*, 2012 Bankr. LEXIS 5317 (Bankr. E.D. Va. 2012), Chapter 13 Debtors sold their home without first obtaining court approval as required by 11 U.S.C. § 363(b) and the court converted their case to one under Chapter 7 of the Bankruptcy Code on a finding of bad faith. The Debtor's motion to sell the property had been denied, but Debtor closed the sale despite never obtaining a court order approving the sale. The court stated the Debtors "are charged with dealing with property of the estate in an open and honest manner, and with full

disclosure to the Court, the creditors and other parties in interest (including the Chapter 13 Trustee). This they failed to do." *Id.* at 20.

Here, neither party disputes that Debtor's post-petition sale of their business was outside the ordinary course of business and therefore required court approval after notice and a hearing. Court approval not being obtained, the sale may be null and void and of no legal force and effect. Neither party has raised this issue with the court.

The Debtors "plead" with the court to be "punished" by allowing them to perform the plan they now propose. For Debtors who have breached their fiduciary duty to the estate, transferred assets without court authorization, and intentionally violated the Bankruptcy Code so that they could get cash from a secret sale and then try to keep it by amending their Schedules, being able to be protected in a Chapter 13 case may well be part of their larger strategy to abuse the Bankruptcy Code, Estate, and creditors. Further, requesting to be "punished" in the Chapter 13 case not have their case dismissed may merely be a Trojan Horse to mislead the court into dismissing the case. With the case dismissed, the Debtors could then further divert, transfer, or hide the sales proceeds, and then file a new case, gambling that they will get a different judge and Chapter 13 trustee.

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

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

The Chapter 13 Trustee does not address how dismissal of this case, with the U.S. Trustee, Chapter 13 Trustee, and Creditors ignoring this misconduct is appropriate. Possibly conversion is proper, but that has not been clearly discussed by the Chapter 13 Trustee and U.S. Trustee. These parties in interest do not address whether dismissal with prejudice, is a better alternative for the Debtors in light of these facts and conduct.

While cause exists to grant relief on the Trustee's Motion, the court has not been presented with sufficient evidence and analysis for the court to determine what relief to grant. The court denies the Motion without prejudice. The Chapter 13 Trustee may file a new motion, or join with the U.S. Trustee in a motion, which clearly analyzes the proper relief to be granted.

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.

14. [10-31724-E-13](#) JAIME/CINDY RODRIGUEZ MOTION TO DISMISS CASE
DPC-1 Mark Wolff 11-26-13 [[43](#)]

Final Ruling: 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. [13-33126](#)-E-7 JOHN DOLMAN MOTION TO DISMISS CASE
TSB-2 Pro Se 11-19-13 [[28](#)]

CASE CONVERTED TO CH. 7 ON
12/4/13

Final Ruling: The case having previously been converted to one under Chapter 7 of the Bankruptcy Code, the Motion to Dismiss 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 Case having been presented to the court, the case having been previously converted to one under Chapter 7 of the Bankruptcy Code, 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 converted to one under Chapter 7 of the Bankruptcy Code.

16. [13-33040](#)-E-13 GUONG NGUYEN MOTION TO DISMISS CASE
TSB-1 Thanh Truong Foxx 11-26-13 [[23](#)]

CASE DISMISSED 12/13/13

Final Ruling: 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 Case 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.

17. [11-49446](#)-E-13 JUAN/EVANGELINA VALERO MOTION TO DISMISS CASE
DPC-2 Seth Hanson 11-26-13 [[91](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final 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). 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. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$675.00 delinquent in plan payments, which represents multiple months of the \$225.00 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.

18. [09-48453-E-13](#) STEVEN/DONNA MENSER
DPC-6 Julian Roberts

CONTINUED MOTION TO DISMISS
CASE
7-30-13 [[222](#)]

CONT. FROM 11-13-13, 9-4-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 tentative decision is to xxxx the Motion to Dismiss. 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:

PRIOR HEARINGS

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,294.98 delinquent in plan payments, which represents multiple months of the \$691.40 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

Debtor responded, stating that Debtors completed their confirmed plan on January 23, 2013, and are entitled to a discharge. Debtor contends that the Trustee made an error in calculation and that according to the confirmed plan, Debtors were to pay \$1,214.00 per month for 36 months for a total of \$43,704.00. The Trustee states \$44,946.77 and Debtor states they have overpaid \$1,242.77 and are not in default.

TRUSTEE'S RESPONSE

The Trustee states there has been some confusion in this case. Trustee asserts the confusion began with debtor's Fourth Amended Chapter 13 plan, where they moved the mortgage creditor (BAC Home Loan) from Class 1 to Class 4 as a result of successfully modifying their loan. Up to the point of the Debtors filing the Fourth Amended Plan, Trustee was paying BAC Home Loan as Class 1 with ongoing payments in the amount of \$3,002.91 per month for a total of \$18,017.46 (6 months).

The Fourth Amended Plan lowered the plan payment from \$4,826.30 to \$1,214.00, but Debtors made the new plan payment effective back to the beginning of the case and failed to account for the \$18,017.46 that was paid to BAC Home Loan by the Trustee.

The Trustee states the confusion began when the Trustee filed an objection to the Fourth Amended Plan correctly pointing out that \$18,017.46 has been paid to BAC Home Loan but the objection incorrectly gave the impression that Debtors had overpaid the Trustee by \$10,627.35. Debtors

apparently had paid into the plan what they needed to, but because the payment terms of the Forth Amended Plan failed to account for the past payments made by the Debtors, it gave the appearance of overpayments, rather than an actual overpayment.

Trustee states the word "overpaid" confused debtors' counsel who in turn filed a Fifth Amended Plan wherein Debtors correctly acknowledged the past payments into the plan, but then reduced the remaining plan payment down to \$691.40 per month. In response to the reduction in payments, Trustee objected to the plan and was left "scratching its head" over the Debtors explanation of spreading the overpayment over the remaining 18 months of the plan.

The Trustee states that the Fifth Amended Plan should have never been confirmed since it did not propose a payment stream sufficient to pay the claims it proposed to pay, but due to the confusion in this case, somehow it got confirmed. The Trustee states that he should have filed a motion to reconsider, but Lawrence Loheit was retiring and the current Trustee was stepping in.

The Trustee argues that while the debtors have paid all payments called for under the erroneously confirmed chapter 13 plan (Fifth Amended Plan), debtors have not finished payment the claims intended to be paid by their plan. Therefore, debtors have not completed their plan. The Trustee states that a priority claim of the Internal Revenue Service remains to be paid. Trustee argues that the plan is not complete and it is still possible for the debtor to modify the plan.

DISCUSSION

Cutting through the "confusion" of prior amended plans, the terms of the current confirmed plan, and the alleged errors in calculation, the pertinent question is whether the confirmed plan sufficiently provides for the payment of the claims. The confirmed Fifth Amended Plan provides for two Class 2 claims in the amounts of \$114.73 and \$495.23, \$4,000.00 in attorneys fees, two Class 5 claims of \$11,796.00 and \$6,216.00, and for Trustee Fees. The Trustee also made payments to BAC Home Loans prior to confirmation of the amended plan and the loan modification in the amount of \$18,017.46. Based on the foregoing, the court determines that the total of \$76,627.14 need to be paid under the plan (estimating the Trustee fees at 8%). The Trustee states \$44,946.77 has been paid into the plan as of the date of the Motion to Dismiss. Therefore, the Debtor needs to pay in approximately \$31,680.37 over the remaining 16 months of the plan. The court estimates the monthly payment to be approximately \$1,980.02 per month.

The following charts summarize the court's analysis:

Plan Payments to Trustee by Debtors Under Plan	
Payments Made Prior to Fifth Amended Plan	\$31,265.35
Payments Made Under Fifth Amended Plan as of Motion to Dismiss	\$13,681.42

Total Plan Payments as of Motion to Dismiss	\$44,946.77
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Plan Payments to Creditors and Expenses

Class 2 Pmt for 60 Months	114.73	60	\$6,883.80
Class 2 Pmt for 60 Months	495.23	60	\$29,713.80
Attorneys Fees Paid Through Plan			\$4,000.00
Trustee Fees Paid Through Plan (assume 8%)		0.08	\$0.08
Home Loan Payments Made by Trustee Prior to Fifth Amended Plan			\$18,017.46
Class 5 Tax Claim Paid Through Plan			\$11,796.00
Class 5 Tax Claim Paid Through Plan			\$6,216.00
Total Monies to be Disbursed Under Plan			\$76,627.14
Payments into Plan as of Filing of Motion to Dismiss			(\$44,946.77)
Projected Additional Payments Required Under Plan			\$31,680.37
Months Remaining Under Plan		16	
Projected Monthly Payment Amount For Remainder of Plan			\$1,980.02

As the current plan provides for \$691.40 per month, the plan payment is not sufficient to provide for the payment of the claims in the confirmed plan.

CONTINUANCE

The court granted a continuance in order for the Debtor to determine a course of action.

Trustee requested the motion be continued to October 2, 2013, due to counsel for Debtor's unavailability. The court granted this request in the Order filed September 16, 2013. Dckt. 237.

TRUSTEE'S SUPPLEMENTAL PLEADINGS

The Trustee filed a supplemental Declaration of Yvette Sanders, stating that the Debtor has paid a total of \$44,946.77, with the last payment received on January 23, 2013, with a total of \$49,241.75 due. The Trustee provides his own analysis, based on actual claim amounts submitted by Debtors' Class 2 and 5 creditors.

The Trustee determines that \$58,225.74 needs to be paid under the plan, when the Debtors have only paid \$44,946.77 into their plan to date. Therefore, the Debtor's remaining balance to be paid into the plan is approximately \$13,270.53.

Based on the above analysis the court continued the hearing on the Motion to Dismiss. The court further ordered that on or before October 15, 2013, the Debtor and Trustee shall file supplemental pleadings setting forth how each compute the amount which must be funded for the remainder of the plan to properly fund the payments required thereunder.

DEBTOR'S RESPONSE ON OCTOBER 14, 2013

Debtors noted that there was a double payment to BAC Home Loans, and that the Debtors as well as Debtors' attorney tried to solve the problem. However, due to various communication problems, Debtors' attempt to solve the overpayment issue never succeeded.

Debtors further suggested that searching for blame in this matter is valueless. Debtors request that since Debtors have been trying actively to resolve their financial difficulties and acted in good faith, the court:

1. provides such discretion as will enable the parties to resolve the discrepancies to the Court's and their mutual satisfaction;
2. support the effort by providing reasonable time lines to accomplish the task; and
3. provide such other direction as the Court perceives will lead to a reasonable and equitable.

Debtors also suggested potential solutions to the problem. Debtors and IRS have an agreement allowing Debtors to make minor payments to the IRS until Debtors' Bankruptcy case is finished. Communication with BAC Home Loans or their successor may provide a way to return the Trustee's overpayments. According to the Trustee's accounting, this will provide about \$18,000.00 in funds.

TRUSTEE'S RESPONSE ON OCTOBER 21, 2013

Trustee responded by pointing out an potential misunderstanding by the Debtors. There was no double-payment made to BAC Home Loans by the Trustee. Trustee further provided evidence of the Trustee's payment to BAC Home Loans starting with the September 2010 disbursements. As a result, the Trustee disbursed a total of \$18,017.46 in ongoing mortgage payments to BAC Home Loans from September 30, 2010 to February 28, 2011.

Additionally, Trustee requests the Court to consider the following matters. Debtors mentioned an "overpayment" or "double payment" to BAC Home

Loans, but have never provided any evidence of direct payments made by Debtors to BAC Home Loans. If Debtors were in fact paying BAC Home Loans directly, this would have been contrary to what was proposed in their Amended plan. Therefore, if there is "overpayment," it is up to Debtors to recover any "double" payments they may have made. The Trustee is willing to assist in the recovery of any proceeds, but will not "lead the charge." The Trustee is also not opposed to Debtors paying the IRS directly as long as Debtors can reach an agreement with the IRS.

DISCUSSION

Nothing has been filed in the case since the last hearing on this Motion to Dismiss. There is little in dispute with respect to the present Motion. The Debtors have failed to sufficiently fund the Plan which has been confirmed in this case. The Debtors, now understanding the problem, have not sought to modify the plan or request a hardship discharge. Rather, the Debtors seek to draft the court to serve as their legal counsel and direct the parties what to do to prosecute this case. Such is not the role of the 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 xxxx.

19. [13-33154-E-13](#) PHILLIP/STEPHANIE BURNS MOTION TO DISMISS CASE
NLE-1 Scott Coben 12-9-13 [[24](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Trustee argues that the Debtor did not commence making plan payments and is \$850.00 delinquent in plan payments, which represents multiple months of the \$850.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Debtor responds, stating that the Debtors will bring the plan current prior to the hearing on this motion.

However, no evidence has been presented to the court that the Debtors are in fact current. Further, the Debtors offer no explanation as to how they can find an "extra" \$850.00 to cure the arrearage when they are already committing 100% of their projected disposable income to fund this plan. Finally, the Debtors offer no testimony or evidence in opposition to the Motion, only the argument of their attorney in a one line opposition to the present 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.

20. [11-46456-E-13](#) SCOTT/MELISSA CUNNINGHAM MOTION TO DISMISS CASE
NLE-1 Justin Kuney 12-9-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to continue the hearing on the Motion to Dismiss. 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 Chapter 13 Trustee moves to dismiss this case pursuant to 11 U.S.C. § 1307(c) as debtor is in material default pursuant to section 6.03 of the plan. According to the Trustee's calculations, the plan will complete in 116 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee states the filed mortgage arrears claim to be paid as class 1 through the plan was \$32,716.88 greater than scheduled and it will take an additional 92 months to pay the claim in full.

The Trustee also argues that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6) as the debtors are delinquent \$465.00 under the terms of the confirmed plan. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtors respond, stating they have been unable to contact the new mortgage servicer to determine the correct amount of arrears. Debtors request more time to have the claim amended and for them to propose a modified plan.

Based on the testimony provided by Counsel's attorney regarding efforts to contact the creditor and Debtor's efforts to pay their creditors, the court grants a continuance to ~~xx:xx~~ x.m. on _____, 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 Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is continued to ~~xx:xx~~ x.m. on _____, 2014.

21. [12-28856-E-13](#) KEVIN/BRANDEE MCCANN MOTION TO DISMISS CASE
NLE-1 David Foyil 12-9-13 [[43](#)]

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

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

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

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

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

22. [11-39759-E-13](#) RICHARD/MELISSA ANDERSON MOTION TO DISMISS CASE
NLE-1 Timothy Stearns 12-9-13 [[67](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final 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). 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. No appearance required.

The Chapter 13 Trustee moves to dismiss the case pursuant to 11 U.S.C. § 1307(c) because Debtors are in material default of the plan. According to the Trustee's calculations, the plan will complete in 87 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Creditor Siskiyou Central Credit Union filed Court Claim No. 11 as secured for \$37,486.70. The creditor's claim is valued at \$19,100.00 per order valuing. The total amount to be paid the creditor including estimated interest is \$23,980.34. After deducting Trustee fees, \$404.35 of the monthly plan payment remains to pay the creditor. Thus, \$23,980.34/\$404.35 = 60 months. As the debtors have completed 27 months of the plan, the total term would be 87 months.

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.

23. [13-33760-E-13](#) JOAN JOHNSON MOTION TO DISMISS CASE
TSB-1 Mark Alonso 12-16-13 [[24](#)]

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 December 16, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Trustee argues that the Debtor did not commence making plan payments and is \$1,133.00 delinquent in plan payments, which represents one month of the 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.

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

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

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

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

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

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

24. [13-34362-E-13](#) CHRISTINE BROWN-ROBERTS ORDER TO SHOW CAUSE - FAILURE
Mikalah R. Liviakis TO PAY FEES
12-13-13 [[21](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on December 9, 2013). The court docket reflects that on December 18, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

The fees having been paid, the Order to Show Cause is discharged.

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.

25. [12-31263-E-13](#) CURTIS FIELDS MOTION TO DISMISS CASE
NLE-1 Peter Macaluso 12-9-13 [[21](#)]

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 December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Chapter 13 Trustee moves to dismiss this case on the basis that the debtor is in material default pursuant to §5.03 of the plan which provides, "If Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to the Trustee's calculations the Plan will complete in 97 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The filed priority claim of the Internal Revenue Service (Court claim #4) was \$24,017.28 greater than scheduled.

Debtor responds, stating that he will be current on or before the hearing. Debtor states he is currently waiting for the Internal Revenue Service to complete their examination and amend their proof of claim.

However, no evidence has been presented to the court that the Debtor is in fact current under the terms of the confirmed 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.

26. [13-33071](#)-E-13 SANTOKH MAHAL ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
12-11-13 [[34](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$40.00 due on December 6, 2013). The court docket reflects that on December 18, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

The fees having been paid, the Order to Show Cause is discharged.

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.

27. [13-33071](#)-E-13 SANTOKH MAHAL MOTION TO DISMISS CASE
TSB-1 Pro Se 12-20-13 [[40](#)]

Final Ruling: 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.**

28. [12-30483-E-13](#) GARY/KIRSTEN SNYDER
NLE-1 Amir Javideyan

MOTION TO DISMISS CASE
12-9-13 [[33](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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).

The court's tentative decision is to grant the Motion to Dismiss. 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 Chapter 13 Trustee moves the court to dismiss this case pursuant to 11 U.S.C. § 1307(c) as the debtor is in material default. The Debtor failed to provide for the priority claim of the Franchise Tax Board, Claim No. 12 in the amount of \$308.54. Section 2.13 makes this a breach of the plan.

RESPONSE

Debtors' Counsel filed a response on December 31, 2013. The Trustee filed the motion pursuant to Local Bankruptcy Rule 9013-1(f)(1), which requires opposition to be filed 14 days before the hearing. Fourteen days before the hearing was December 25, 2013, which was a holiday. Even allowing for the holiday, the opposition was filed eight (8) days before the hearing. No explanation was provided why the response was filed six (6) days late and no leave for the filing of an untimely opposition has been requested by Debtor.

Even if the court considered the untimely response, no evidence has been filed to support Counsel's contentions. Counsel provides that "Debtor's attorney asserts that on December 16, 2013, the Debtors mailed in a Money Order to the Franchise Tax Board in the amount of \$309.00 to settle the balance owed." Dckt. 37. No declaration has been provided to the court as evidence for this factual contention. Therefore, the court has no evidence to support Counsel's contentions.

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

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

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

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

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

29. [13-33583](#)-E-13 SUE MARIANO ORDER TO SHOW CAUSE - FAILURE
Charnel J. James TO PAY FEES
11-26-13 [[27](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on November 21, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and fees that have subsequently become due remain unpaid.

The court's tentative decision is to sustain the Order to Show Cause and order the case 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 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 sanctions are issued pursuant thereto, and the case is dismissed.

30. [12-28685-E-13](#) RALPH/JANNETTE CAINES MOTION TO DISMISS CASE
NLE-1 Mary Ellen Terranella 12-9-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$1,253.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee also argues that according to the Trustee's calculations the Plan will complete in 63 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). In a plan paying 0% to unsecured creditors, \$16,871.91 remains to be paid to Class 2 creditors and \$33,736.67 to Class 5 creditors. These claims total \$50,608.58. After payment of Trustee fees \$1,133.35 of the plan payment remains. Thus it will take an additional 45 months for the plan to complete. The debtors' have completed 18 months. The claim filed by Debtor's Attorney for the Franchise Tax Board 2009 taxes in the amount of \$1,709.71 exceeds the scheduled priority amount of \$7,1551.00 when combined with the Franchise Tax Board priority claim of \$6,712.59 for 2011 taxes.

DEBTORS' OPPOSITION

The Debtor responds, stating that Debtor's counsel verified with the Chapter 13 Trustee's office that the debtors did make the November payment, however, they erroneously believed the payments were \$1,173.00 when it had increased to \$1,193.00, creating a delinquency of \$80.00. Debtors state they will cure the shortfall and make their December payment prior to the hearing on the Motion.

However, no evidence has been presented that the delinquency and December plan payment have been made to date. 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. [10-42986-E-13](#) CYNTHIA SEAMAN AND STEVEN MOTION TO DISMISS CASE
DPC-3 MARSCHKE 12-10-13 [[217](#)]
Harry Roth

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final 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). 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. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$30,550.00 delinquent in plan payments, which represents multiple months of the \$4,500.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee also states that Debtor has failed to file a motion to allow for further administration under Federal Rule of Bankruptcy Procedure 1016, as a Statement Noting a Party's Death was filed October 22, 2013, stating the death of co-debtor Cynthia Seaman.

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

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

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

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

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

32. [11-26397](#)-E-13 BRIAN/LYDIA PRADY MOTION TO DISMISS CASE
DPC-2 Mark Wolff 11-26-13 [47]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Tentative Ruling: 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 tentative decision is to deny the Motion to Dismiss without prejudice. 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 Trustee seeks dismissal of the case on the basis that the Debtor is \$1,110.00 delinquent in plan payments, which represents multiple months of the \$370.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtors respond that the Debtors cured the delinquency and are now current in plan payments.

Debtor having provided evidence that they are current on their plan payments, the court denies the Motion to Dismiss without prejudice.

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

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

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

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

33. [13-30898](#)-E-13 WINONA EDMONSON ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO PAY FEES
11-25-13 [[53](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$52.00 due on November 18, 2013). The court docket reflects that on December 2, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

The fees having been paid, the Order to Show Cause is discharged.

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.

34. [13-28099-E-13](#) MICHIE SCHMITZ
TSB-4 Geoffrey Sutliff

MOTION TO DISMISS CASE
12-16-13 [[69](#)]

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 December 16, 2013. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Dismiss and dismiss the case. 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 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 29, 2013. 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.