

conversion of the case for failure to commence plan payments.

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 February 24, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor filed a response on March 17, 2015. Dckt. 32. The Debtor states that a new plan will be filed on or before the hearing.

The Debtor's response does not state that the delinquency has been cured nor how the Debtor plans to cure the default.

AMENDED PLAN AND MOTION TO CONFIRM

On March 24, 2015, Debtor filed a First Amended Chapter 13 Plan. Dckt. 36. The basic terms of the Amended Plan are:

- A. 58 monthly plan payments of \$150.00 each.
- B. \$4,000.00 Fees for Debtor's counsel, with \$3,500.00 paid through the Plan.
- C. Class 1.....None
- D. Class 2.....None
- E. Class 5
 - 1. Bank of America, 4840 Hamilton Street property surrendered.
- F. Class 4.....None
- G. Class 5.....None
- H. Class 6.....None
- I. Class 7, 5.00% dividend on \$79,576.00 General Unsecured Claims.
- J. Additional Provisions....None.

In the Motion to confirm, Debtor states that all of his assets are exempt. Dckt. 34. Debtor does not state the reason for proceeding with a \$150.00 a month plan.

Debtor's Original Chapter 13 Plan required \$1,500.00 a month plan payments. Dckt. 11. This was to fund Bank of America, N.A. to receive a \$3,100.00 a month adequate protection payment pending a possible loan modification. (An "Ensminger Additional Provision." Class 1 lists Bank of Americas N.A. having a secured claim with a \$172,212.66 arrearage and the Additional Provision lists the regular monthly payment on this claim to be \$4,100.00.

On Form 22C Debtor lists gross monthly income of \$17,646.64 from his business. Dckt. 9. As an over-median income debtor, Congress provides in 11 U.S.C. § 1325(b)(3) that in computing projected disposable income for an over-median income debtor the court shall use the expenses as computed by the Internal Revenue Service guidelines mandated in 11 U.S.C. § 707(b)(2).

On Schedule I Debtor lists having net income from his business of \$4,156.99. Dckt. 9. He computes this net amount by estimating gross monthly income of \$10,000.00 (which is more than 50% less than stated on Form 22-C for the six months preceding the filing of the bankruptcy case) and having expenses of \$5,843.01. *Id.* at 12.

On Original Schedule J Debtor states that he has monthly expenses of only \$2,656.99. *Id.* at 30-32. By stating under penalty of perjury that he has expenses of only \$2,656.99 the Debtor was able to make his Original Chapter 13 Plan with a stated \$1,500.00 a month look facially feasible. FN.1. However, it ignored the \$3,100.00 a month plan adequate protection payment which also had to be made to Bank of America, N.A.

FN.1. Though on review in connection with this Motion, Original Schedule J appears to have the hallmarks of a "liar declaration," a statement under penalty of perjury a person make, irrespective of its truth, because it helps them win if they can deceive the court and other parties in interest. Questionable expense items include: (1) \$0.00 home maintenance for a home, (2) \$300.00 for food and housekeeping supplies, and (3) \$0.00 for income and self-employment taxes.

The Chapter 13 Trustee objected to confirmation of the Original Chapter 13 Plan identifying the income shortfall and failure to show the ability to pay the required \$3,100.00 a month adequate protection payments. The Chapter 13 Trustee also noted an apparent error in Form 22-C, which appears to show that Debtor can make monthly plan payments of \$9,988.70. Dckt. 18.

To support confirmation of the First Amended Chapter 13 Plan Debtor provides his Amended and Supplemental Schedule J. Dckt. 40. First, the court does not understand how this can be an amended Schedule J (which corrects errors in the Original Schedule J and states the expenses as of the commencement of the case) and a supplemental Schedule J which states post-petition changes which have changed since commencement of this bankruptcy case.

The change on the Amended/Supplemental Schedule J is that Debtor has added a housing expense of \$1,350.00 a month. None of the other numbers have changed and Debtor continues to make no provision for payment of income and self-employment taxes and continues to state that his food and housekeeping expenses are only \$300.00 a month. Debtor does not provide a Supplemental Schedule I showing his actual current income. With the addition of the \$1,350.00 a month housing expense, now the Debtor shows that he has only \$150.00 a month of monthly net income.

While the motion to confirm and declaration appear regular on their face, this nominal plan appears to be merely a charade to keep this case pending - not a bona fide, good faith attempt to restructure Debtor's finances through a Chapter 13 case.

The Bankruptcy Code provides for the dismissal of a Chapter 13 case "for cause." 11 U.S.C. § 1307(b). The non-exclusive listing of the types of grounds for cause stated in § 1307(b) include: unreasonable delay by debtor that is prejudicial to creditors, and failure to commence making timely monthly plan payments. Here, creditors have been delayed by Debtor's non-productive, financially inaccurate statements and plan filed. Debtor has not prosecuted this case in good faith, but done so to get his bankruptcy benefits by misstating his finances.

The court was prepared to dismiss the case, absent Debtor successfully responding to these issues. The Trustee electing to dismiss his Motion affords Debtor and his counsel to preemptively address these concerns and correct any mis-perceptions of the court concerning the Debtor's conduct and finances.

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 Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 41, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Trustee's Motion to Dismiss the Chapter 13 case is dismissed without prejudice, and the bankruptcy case shall proceed before this court.

2. [10-44204-E-13](#) IRMA SANCHEZ
DPC-2 Michael O'Hayes

CONTINUED MOTION TO DISMISS
CASE
1-21-15 [[58](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue to 3:00 p.m. on April 14, 2015 the hearing on the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 58.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$782.00 delinquent in plan payments, which represents multiple months of the \$391.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Irma Sanchez ("Debtor") filed a reply to the instant Motion on February 3, 2015. Dckt.62. Debtor replies as follows:

Debtor's confirmed Chapter 13 plan called for monthly payments of \$391.00 for 60 months to pay the \$9,625.00 value portion of the \$18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total \$56,619.00. The \$9,625.00 claim is being paid with 6% interest with a monthly dividend of \$186.00 and a total of \$11,16000 would have been paid at \$186.00 monthly. The Debtor's plan also calls for payment of \$2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor has been paying more than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to \$11,579.35, according to Page 10 of the Trustee's Notice of Filed Claims, which lowers the amount to be paid and the Trustee's compensation for paying the claims. Also, the Trustee's percent is 5.2% according to the Case Profile information available on January 26, 2015.

A review of the Case Profile shows that the car creditor has actually been paid thru January 26, 2015 a total of \$14,752.38 which is in excess of the

\$11,160.00 called for in the plan. The creditors with general unsecured claims began receiving monthly dividends on November 27, 2013. Debtor's counsel did not total the individual compensation paid to each of them to date, but it clearly amounts to more than 1% of their claims.

It should not be necessary for the Debtor to propose and confirm an amended or modified plan when she has paid a sufficient amount to satisfy the requirements of her confirmed plan and she is not required to be in a plan of 60 month duration. If the court finds that a modified plan is necessary, the Debtor requests fourteen days to do so.

TRUSTEE'S REPLY

The Trustee filed a reply on February 10, 2015. Dckt. 65. The Trustee states the following:

1. The Debtor's confirmed plan calls for payments in the amount of \$391.00 for 60 months with "no less than 1%" to the general unsecured creditors. Dckt. 10.
2. Debtor is currently delinquent in the amount of \$1,173.00.
3. January was month 52. A total of \$20,332.00 has come due through January 25, 2015. To date, Debtor has paid in a total of \$19,159.00 with last payment of \$391.00 on November 13, 2014.
4. The Trustee has review the confirmed plan and it states in Class 7, general unsecured claims are to be paid no less than 1% with no additional provision in the plan that would alter this treatment.
5. The Trustee has reviewed the order confirming the plan (Dckt. 50) and there is no language included that would alter this treatment.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing to April 1, 2015, to allow counsel to meet with his client and determine whether it is in the Debtor's best interests to (1) cure the default and make the existing plan payments for the remaining six months of the plan, (2) modify the plan to lower the payments based on changed financial circumstances, (3) seek a hardship discharge, or (4) such other relief as proper under the Bankruptcy Code.

DISCUSSION

On March 3, 2015, the Debtor filed a Motion for Entry of Hardship Discharge. Dckt. 73. The motion is set for hearing at 3:00 p.m. on April 4, 2015.

Due to the interconnectedness of the instant Motion to Dismiss and the Motion for Entry of Hardship Discharge, the court continues the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on April 14, 2015.

3. 15-20008-E-13 VICTOR ABRIAM
DPC-2 Susan Terrado

MOTION TO DISMISS CASE
3-13-15 [[39](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 13, 2015. Dckt. 38.

The Trustee argues that the Debtor did not commence making plan payments and is \$2,580.00 delinquent in plan payments, which represents one month of the \$2,580.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Debtor presented no opposition to the Motion.

Therefore, for the Debtor's failure to commence plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

4. 14-31509-E-13 BOBBY CHRISTIAN AND SEAN MOTION TO DISMISS CASE
DPC-2 WARREN 3-13-15 [[39](#)]
Peter Macaluso

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 Debtors, Debtor's Attorney, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 13, 2015. Dckt. 39.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$520.00 delinquent in plan payments, which represents one month of the \$520.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, 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 March 3, 2015. Dckt. 35. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor has not filed a response that offers an 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).

Therefore, for the Debtor's delinquency and failure to file a new 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.

5. [14-31014](#)-E-13 ROBERT SLAMA MOTION TO DISMISS CASE
DPC-2 Scott Johnson 3-18-15 [[41](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

6. [14-27117](#)-E-13 ANTHONY/GWENDOLYN LAND MOTION TO DISMISS CASE
DPC-3 Scott Johnson 2-26-15 [[72](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

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

7. [14-22527-E-13](#) MARK/PATRICIA HARLAND
DPC-2 Joseph Canning

MOTION TO DISMISS CASE
2-25-15 [[74](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 25, 2015. 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 Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 25, 2015. Dckt. 74.

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 January 13, 2015. Dckt. 70. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtors filed an opposition to the instant Motion on March 18, 2015. Dckt. 78. The Debtors state that they will be filing a Motion to Confirm an Amended Plan and that the delay in the filing a Motion to Confirm Amended Plan was due to counsel awaiting an order on a Motion to Value Collateral. Lastly, Debtors state they are current on all plan payments.

DISCUSSION

Upon review of the court docket shows that the Debtors file a Motion to

Confirm Amended Plan on March 18, 2015, which is set for hearing on May 5, 2015. Dckt. 80. The Motion seeks to confirm the plan filed April 28, 2014.

The court has previously denied confirmation of the April 28, 2014 plan on January 29, 2015. Order, Dckt. 70. The court did not deny the motion "without prejudice." In denying confirmation the court found that Debtors failed to provide documentation of their income and expenses under penalty of perjury.

"Without the Debtors schedules actually being supplemented on the record, outside of the attached exhibits to a supplemental declaration, the court must look at the actual schedules provided for in the case which shows that the Debtors do not have sufficient income to make payments under the proposed Plan."

Civil Minutes, Dckt. 68.

The court has reviewed the motion to confirm the April 28, 2014 Plan. Dckt. 80. It fails to state with particularity the grounds upon which confirmation of the plan is requested pursuant to 11 U.S.C. §§ 1322, 1325. Debtor provides a declaration in support of confirmation which states that they have income of \$8,500.00 a month and expenses of (\$8,350.00) a month, so they can make a plan payment of only \$150.00 a month. Debtor's have failed to provide Supplemental Schedules I and J showing how they come up with these income and expense numbers. Dckt. 82.

Original Schedules I and J are not more than a year old. On Schedule A Debtor lists owing only one piece of real property, the 341 Honeysuckle Drive Property. Dckt. 12. On Schedule B Debtor lists owing 100% of Har Lee Mar Worldlink Corp. and 100% ownership in Honeysuckle Comfort Home, LLC. *Id.*

On Schedule I debtor Mark Harland states that he is unemployed and debtor Patricia Harland states that she is an administrator for Har Lee Mar Worldlink Corporation, for which she has gross income of \$1,094.69 a month. However, both Debtors state that they receive \$4,500.00 and \$3,000.00, respectively, a month from rental property or operating a business. *Id.* at 20-21. No sole proprietorship or other business operated by Debtor is listed on Schedule B. Schedule I does not list any dividend or distribution from either of the corporations listed on Schedule B.

On Schedule J Debtors list \$8,365.00 in month expenses, which results in a showing of only \$135.00 a month in monthly net income. *Id.* at 22-23. These expenses include: \$3,034.00 for mortgage, \$50.00 for home maintenance, \$300.00 for food and housekeeping supplies (for a family of three which includes a 16 years old son), \$1,785.00 in medical and dental expenses, \$0.00 for taxes, and \$1,928.00 for mortgage on other property (which is not listed on Schedule A).

On the Statement of Financial Affairs, in response to Question gross rental income of \$6,000.00 in 2014, \$36,000.00 in 2013, and \$27,000.00 in 2012 is listed for property identified as 609 Paradise. *Id.* at 25-26. In response to Question 5 of the Statement of Financial Affairs Debtor states that the 609 Paradise Court property was foreclosed on by the creditor. *Id.* at 27. If

further states that Debtors are continuing to occupy and pay the holder of the first deed of trust, notwithstanding the foreclosure having occurred.

It is appears that the Debtors, in an attempt to avoid dismissal, have filed a Motion to Confirm a plan that has previously been denied. This is not only improper but also prejudices creditors. This repeat filing of a motions to confirm for a plan that the court has previously found could not be confirmed appears to be a delay tactic on behalf of the Debtors.

Debtor has not addressed the evidentiary deficiency which led to denial of the motion to confirm the April 28, 2014 plan. Rather, Debtor merely states that the court should blindly accept whatever number Debtor states for income and expenses. Further, looking at the stale numbers from a year ago, Debtor makes no provision for payment of any taxes, notwithstanding \$7,500.00 in income being generated from the "operation of a business." On Schedule B, Debtor continues to deduct a mortgage payment for a property lost to foreclosure. No explanation is provided in the current (or prior) declaration. Debtor would also have this court believe that a family of three, including a 16 year old son, spends only \$300.00 a month for food and housekeeping supplies. It appears that the Original Schedules I and J, and the current declaration, are "liar declarations," statements made under penalty of perjury without regard to their truth because it "helps the party win" (if the court can be deceived by the inaccurate statements).

The only response to the Motion to Dismiss is counsel's simple argument "The delay in the filing a Motion to Confirm Amended Plan was due to counsel awaiting an order on a Motion to Value Collateral. Said order has not been entered. Debtors are current on all plan payments." Dckt. 78. As phrased, counsel makes it appear that it is the court who delayed in issuing the order on the motion to value. Counsel filed the original motion to value on May 28, 2014, with the hearing set for July 1, 2014. That motion was denied without prejudice because Debtor failed to name the creditor filing the proof of claim whose secured claim was to be valued by the motion. Civil Minutes, Dckt. 35. The order denying the motion was filed on July 16, 2014. Dckt. 37.

The replacement motion to value was filed on January 6, 2015 (six months after entry of the order denying the original motion). The hearing on the replacement motion to value was conducted on February 10, 2015 and the order was filed on February 11, 2015. Order, Dckt. 73. It appears that the delay in filing the current motion to value occurred not because Debtor was waiting for an order to value the secured claim, but Debtor not filing a motion to value after the July 2014 denial of the original motion.

The current motion was not filed until February 25, 2015. Almost two months after filing the second motion to value and a month after the court entered the order on the second motion to value. No reason is given for the six month delay in filing the motion to value or filing a motion to confirm an amended plan (which could have been filed with the second motion to value).

Cause exists pursuant to 11 U.S.C. § 1307(b) to dismiss the case. Debtor's opposition in recycling the April 28, 2014 Plan and failing to provide accurate, current, credible financial information continues to work unreasonable delay which is of prejudice to creditors. The Plan is not prosecuted in good faith to restructure the Debtor's finances in this Chapter 13 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.

8. [13-27835](#)-E-13 JEFFREY/MONICA JACKSON CONTINUED MOTION TO DISMISS
DPC-1 Kristy Hernandez CASE
12-15-14 [[116](#)]

Final Ruling: No appearance at the January 21, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 15, 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 continue the Motion to Dismiss to 10:00 a.m. on May 27, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on December 15, 2015. Dckt. 116.

The Trustee argues that the Debtors are in material default. The Debtors failed to provide for the Priority part of the claim of the Franchise Tax Board (Proof of Claim No. 6) in the amount of \$4,701.82. The Debtors failed to provide for the Priority part of the claim of the Franchise Tax Board (Proof of Claim No. 6) in the amount of \$163.15. Section 2.13 of the Plan makes this failure a breach of the Plan. The Debtors were provided a Notice of Filed Claims on January 28, 2014 (Dckt. 108) which listed the claims on page 5 and 6 as priority and not provided for in the Plan and indicated that a motion to modify was required.

DEBTOR'S OPPOSITION

Debtors filed an opposition to the instant Motion on January 7, 2015. Dckt. 120. The Debtors state that they acknowledge that their presently proposed chapter 13 Plan fails to account for payments to the Franchise Tax Board. However, Debtors argue that the root cause of the failure to propose a modification to their Chapter 13 Plan to account for these priority tax claims has been Debtors' secured mortgage lender's failure to provide accurate post-petition 1098s. It is Debtors' contention that they do not have any outstanding tax liability owing to Franchise Tax Board and that the Franchise Tax Board will be withdrawing and/or filing an amended Proof of Claim reducing the priority and general unsecured tax liability in this case to \$0.00.

Debtors request that the court continue the instant Motion to March 2015 to allow the Debtors the opportunity to determine the priority tax liability due, if any, and the opportunity to propose a modified plan if there is any tax liability.

JANUARY 21, 2015 HEARING

At the hearing, the court continued to 10:00 a.m. on April 1, 2015 to allow the Debtors the opportunity to review the tax records and propose a modified plan, if necessary.

DEBTORS' SUPPLEMENTAL DECLARATION

The Debtors filed a supplemental declaration on March 25, 2015. Dckt. 126. The Debtors state that they are aware that their plan fails to account for payments to the Franchise Tax Board with its priority tax claims in the amounts of \$4,701.82 and \$163.25. The Debtors state the reason for this is because they do not actually owe the debt.

Since the last hearing, the Debtors state that they have filed their 2010, 2011, 2012, and 2013 taxes with the Franchise Tax Board. The returns were filed on March 18, 2015. The Debtors state that their 2013 taxes resulted in \$0,00 owed and no refund. For 2012, the Debtors state that they are owing \$270.00. For 2011, the Debtors state they will receive a refund of \$981.00. For 2010, the Debtors state they will be receiving a refund of \$358.00.

The Debtors state that they believe the \$270.00 they owe for 2012 tax year will be offset by the refunds for 2010 and 2011 tax years so no debt will be owed to the Franchise Tax Board.

The Debtors reiterate that the reason for failing to file these tax years previously was because their lender sent inaccurate 1098s and were only able to recently acquire them.

The Debtors request that the court continue the hearing to May 27, 2015 to allow the Franchise Tax Board to amend or withdraw its Proof of Claim.

DISCUSSION

In light of the Debtors' request for a continuance to allow the Franchise Tax Board time to reevaluate their claim based on the Debtors' recently filed tax returns for 2010, 2011, 2012, and 2013 and the issue over

the Franchise Tax Board claim being the sole basis for the Trustee's Motion, the court continues the hearing to 10:00 a.m. on May 27, 2015.

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

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

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

IT IS ORDERED that the Motion to Dismiss is continued to 10:00 a.m. on May 27, 2015.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 13, 2015. Dckt. 67.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,800.00 delinquent in plan payments, which represents multiple months of the \$1,400.00 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 also 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 March 10, 2015. Dckt. 66. 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).

Lastly, the Trustee argues that this is the Debtor's fifth bankruptcy filing within the past three years. A review of the court's files discloses the following information concerning the four prior cases:

12-31661 Chapter 13		
Attorney For Debtor: John S. Mohun	Filed: 6/21/2012 Dismissed: 3/24/2013	Unopposed Motion to Dismiss - \$6,900.00 default in Plan payments and no amended plan filed after denial of confirmation. 12-31661, Civ. Min., Dckt. 52
12-28786 Chapter 13		
Attorney For Debtor: John S. Mohun	Filed: 5/6/2012 Dismissed: 6/4/2012	Dismissed for failure to timely file documents. 12-28786, Order, Dckt. 16
12-20014 Chapter 13		
Attorney for Debtor: John S. Mohun	Filed: 1/2/2012 Dismissed: 3/21/2012	Unopposed Motion to Dismiss- failure to make any plan payments and failure to file a motion to confirm plan. 12-20014, Motion and Order, Dckts. 32,26.
11-33790 Chapter 7	Filed: 6/1/2011 Discharge: 9/19/2011 Closed: 9/23/2011	

In denying confirmation of the proposed plan in this case, the court determined:

- A. "The proposed Plan seems to, in part, rely on the proposed sale of the land in Mexico. However, as the Trustee points out, there is little to no information as to the means the Debtor intends to execute the sale. When the plan is dependent on the

sale of real property, the Debtor must provide more information than just mere cursory description."

- B. "Additionally, notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditors secured claim, raises doubts about the Plans feasibility. See 11 U.S.C. § 1325(a)(6). This, in conjunction with the Debtor being a repeat filer, this is reason to sustain the objection."
- C. "The First Amended Plan provides for monthly plan payments of \$1,400.00, plus within eight months the Debtor is to generate monies from the sale of lots in Mexico. For the Class 1 and Class 2 claims, no distributions are made through the plan from the \$1,400.00 a month payments. No payments are to be made to Debtors counsel through the Plan. No motion to value has been filed for the Lighthouse Mortgage claim."
- D. "Debtor has claimed an exemption of \$22,000.00 in one of the Mexico Properties. Amended Schedule C, Dckt. 36 at 5. Assuming 10% for costs of sale, currency conversion, and other transactional costs, there appears to be \$158,000.00 of value in the Mexico Properties to pay creditor claims. The value in these Mexico Properties (which were not disclosed in the prior bankruptcy cases) does not appear to be provided for in the First Amended Plan."
- E. "As to the Creditor's objection, the plan does not propose to cure all of the Creditors pre-petition arrears."
- F. "This plan seems very similar to the originally filed plan, barely addressing any of the courts and Trustees original concerns. It appears apparent to this court that the proposed plan is not the Debtors best effort and there are serious concerns over whether the Debtor is being fully up-front about his finances."

Civil Minutes, Dckt. 64.

Debtor has failed to prosecute this case, causing continuing unreasonable delay and prejudice to creditors. While having what appear to be substantial assets, Debtor has failed to prosecute this bankruptcy case in good faith. Cause exists to dismiss this bankruptcy 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. [15-20336-E-13](#) **ANTWANETTE RAYMOND** **ORDER TO SHOW CAUSE - FAILURE**
David Foyil **TO PAY FEES**
3-4-15 [[44](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Antwanette Raymond ("Debtor"), Trustee, and other parties in interest on March 4, 2015. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on February 18, 2015).

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

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

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

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

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

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

11. [15-20336-E-13](#) ANTWANETTE RAYMOND
David Foyil

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-24-15 [[41](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Antwanette Raymond ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 25, 2015. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on February 19, 2015).

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

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

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

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

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

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

12. [12-40838-E-13](#) JILL HARRISON
DPC-2 Earl Hickman

MOTION TO DISMISS CASE
3-2-15 [[32](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. 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.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 32.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,180.00 delinquent in plan payments, which represents multiple months of the \$378.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file a response to the instant Motion nor provided any evidence that the Debtor has cured the delinquency.

Therefore, because the Debtor has failed to cure the delinquency, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

13. 14-32440-E-13 TINA BAUGHMAN MOTION TO DISMISS CASE
DPC-2 Bruce Dwiggins 2-18-15 [[18](#)]

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 February 18, 2015. By the court's calculation, 42 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 without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 18, 2015. Dckt. 18.

The Trustee argues that the Debtor did not commence making plan payments and is \$570.00 delinquent in plan payments, which represents multiple months of the \$570.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Trustee notes that the Debtor's prior Chapter 13 case was dismissed for failure to make plan payments. Case No. 14-28001, Dckt. 20.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The Meeting was continued to March 12, 2015 at 10:30 a.m. According to the Trustee's Report for the continued Meeting, the

Debtor appeared with counsel. Trustee Reports, March 13, 2015.

The Debtor filed a response on March 18, 2015. Dckt. 22. The response states that the Debtor appeared at the continued Meeting. Furthermore, the Debtor states that the Debtor will file a Motion to Confirm Amended Plan, which will serve to bring the Debtor current.

The Debtor filed an amended plan and Motion to Confirm Amended Plan on March 24, 2015. Dckt. 24 & 27. The Motion is set for hearing on May 19, 2015.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 24, 26. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

It appearing that Debtor is addressing the Trustee's grounds and having provided a detailed motion and declaration to support confirmation, the Motion to Dismiss is denied without prejudice.

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

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

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

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

14. 10-30741-E-13 RICHARD HALK MOTION TO DISMISS CASE
DPC-7 Mikalah Liviakis 3-2-15 [116]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

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

15. 13-31441-E-13 DOREEN GASTELUM
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
2-26-15 [45]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

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

16. [10-33842-E-13](#) PETER/SHAUNA GOWEN
DPC-1 Mikalah Liviakis

MOTION TO DISMISS CASE
3-2-15 [[65](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. 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.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 65.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,150.00 delinquent in plan payments, which represents multiple months of the \$400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not responded to the instant Motion nor has the Debtor provided evidence that they have cured the delinquency.

Therefore, because the Debtor remains delinquent, 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

18. 15-20145-E-13 SANTOKH MAHAL MOTION TO DISMISS CASE
DPC-2 Pro Se 2-25-15 [[35](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

19. 15-20446-E-13 DENNIS GARWOOD MOTION TO DISMISS CASE
DPC-2 Douglas Jacobs 3-12-15 [[34](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and

supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 12, 2105. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 12, 2015. Dckt. 34.

The Trustee argues that the Debtor did not commence making plan payments and is \$2,100.00 delinquent in plan payments, which represents one month of the \$2,100.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee also alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The Meeting of Creditors was continued to 10:30 a.m. on April 2, 2015.

Furthermore, 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 argues that the Debtor is not entitled to Chapter 13 relief because the Debtor is over the unsecured debt limit under 11 U.S.C. § 109(e). The Debtor did not originally file a Schedule F with the petition. However, the Debtor filed a Schedule F on February 3, 2015. Dckt. 9. The Debtor's Schedule J lists unsecured debt totaling \$394,704.00. However, the unsecured debt limit for a Chapter 13 is \$383,175.00. 11 U.S.C. § 109(e). Additionally, there are two debts listed on Schedule F with amounts listed as "unknown."

The Debtor has not filed a response to the instant Motion.

Therefore, because the Debtor has failed to cure the delinquency, appear at the Meeting of Creditors, provide tax returns to the Trustee, and the Debtor being over the debt limit under 11 U.S.C. § 109(e), 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. 14-29448-E-13 BILLY GORBET MOTION TO DISMISS CASE
DPC-3 Michael O. Hays 2-24-15 [[48](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 24, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 24, 2015. Dckt. 48.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,095.00 delinquent in plan payments, which represents multiple months of the \$1,365.00 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 December 23, 2014. Dckt. 34. 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).

The Debtor has not filed a response to the instant Motion nor provided evidence as to the curing of the delinquency.

Therefore, because the Debtor is delinquent in plan payments and has not filed an amended plan following the denial of confirmation, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

21. [14-30249](#)-E-13 JOHN/JESSIE HEINRICHS
DPC-2 Marc Caraska

MOTION TO DISMISS CASE
2-17-15 [[38](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 17, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

The court's decision is to deny without prejudice the Motion to Dismiss.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 17, 2015. Dckt. 38.

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 January 13, 2015. Dckt. 37.

The Debtor filed an opposition to the instant Motion on March 18, 2015. The Debtor states that they have filed an amended plan and motion to confirm the amended plan, which is set for hearing on March 5, 2014. Dckt. 42 & 44.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The Debtor having acted to confirm the plan and doing so in a manner consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the Motion is denied without prejudice.

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

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

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

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

22. 15-20149-E-13 ANNA PETERSON
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-16-15 [[41](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anna Peterson ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 16, 2015. The court computes that 16 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 (\$76.00 due on March 10, 2015).

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

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

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

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

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

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

23. [14-27755-E-13](#) ANTHONY FURR
DPC-3 Richard Jare

MOTION TO DISMISS CASE
2-24-15 [[142](#)]

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 February 24, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 instant Motion to Dismiss on February 24, 2015. Dckt. 142.

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 January 23, 2015. Dckt. 141.

The Debtor filed an opposition on March 18, 2015. Dckt. 146. The Debtor states that the amended plan filed on October 25, 2014 is the pending plan which the Debtor is current in plan payments. The Debtor states that a motion confirming this plan cannot be brought because the Debtor and Sarah Stratton improperly drafted four claims on behalf of PennyMac and there is a pending Adversary Proceeding No. 15-02012 filed by Debtor against PennyMac that needs to be completed before a motion confirming the amended plan can be filed.

A review of the docket shows that the Debtor filed an amended plan on October 25, 2014. Dckt. 92. However, there is no accompanying motion to confirm.

Pursuant to Local Bankr. R. 3015-1(d)(1), if a debtor amends a plan

before confirmation pursuant to 11 U.S.C. § 1323, "the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it." Here, the Debtor has failed to follow the Local Rule and instead filed an amended plan over five months ago, with no motion to confirm. This is in violation of Local Bankr. R. 3015(d)(1).

The Debtor is attempting to use his failure to abide by Local Bankr. R. 3015-1(d)(1) as grounds to object to the Trustee's instant Motion. This is improper. While the Debtor is operating under the terms of the amended plan, the failure to file the motion to confirm is an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). The Debtor should not be allowed to avoid the requirements of the Local Rules to avoid dismissal when such a failure results in prejudice to the creditors.

Furthermore, the existence of an Adversary Proceeding is not proper grounds to justify the Debtor failing to file a motion to confirm. The Debtor could file a modified plan if, after confirmation and the Adversary Proceeding, the terms of the confirmed plan is no longer applicable. However, the mere existence of the Adversary Proceeding does not excuse the failure to file a motion to confirm with the amended plan.

With respect to the October 25, 2014 Plan, it is not a proposed plan before this court. The court denied the motion to confirm that Plan. Order, Dckt. 141. Debtor cannot rely on a plan for which confirmation has been denied.

Debtor is taking no action to prosecute a Chapter 13 reorganization in good faith. Rather, he seeks to carry on litigation with Pennymac Holding, LLC, which conducted a post-petition foreclosure sale on real property after obtaining relief from the automatic stay. See Civil Minutes, Dckt. 134. In other cases involving a dispute between the debtor and creditor/conflicting post-foreclosure owner of property, some debtors have built that litigation into a bankruptcy plan. Rather than requiring a Federal Rule of Civil Procedure 60(c) bond, the debtor self funds a bond with a monthly payment into a blocked account equal to the monthly mortgage payment or such other reasonable amount. The automatic stay is not merely a free injunction to litigate non-bankruptcy issues.

Debtor (a former attorney) filed a complaint in pro se to commence adversary proceeding 15-2012 on January 16, 2015. The complaint appears to state non-bankruptcy grounds by which Debtor, to whom the property was transferred by the non-debtor obligor (Debtor not being personally obligated on the note) by which the note should be invalid, the deed of trust invalid, and Pennymac Holding, LLC be determined to have no rights to the Property at issue.

On February 17, 2015, Pennymac Holding, LLC filed a motion to dismiss the Adversary Proceeding. 15-2012, Dckt. 6. Hearing on that motion is set for April 9, 2015. The motion was noticed pursuant to Local Bankruptcy Rule 9014-1(f)(1), with written opposition due at least fourteen days prior to the April 9, 2015 hearing date. No opposition to the Motion to Dismiss has been filed as of the court's March 30, 2015 review of the file (which is less than fourteen days before the April 9, 2015 hearing date).

There is no good faith, bona fide, reorganization proposed in this case.

The October 25, 2014 plan provides to pay Debtor's counsel and nobody else. For the Class 7 general unsecured claims, Debtor proposes to pay 100% of an aggregate of \$7.00 (seven dollars) in general unsecured claims. The October 25, 2014 Plan does not provide for creating a Rule 65(c) fund and improperly purports to pay Pennymac Holding, LLC as holding a Class 2 claim.

Debtor has failed to propose a plan or file a motion to confirm an amended plan. Further, Debtor has not (and most likely cannot given the facts) prosecuted this case in good faith or attempted to propose a plan to effectuate a reorganization under Chapter 13 of the Bankruptcy Code. As this court has addressed before, Debtor may take his non-bankruptcy claims to the Superior Court or the District Court and prosecute them against Pennymac Holding, LLC. The court having lifted the automatic stay, the foreclosure, as asserted by Pennymac Holding, LLC, has occurred.

The only possible party in interest in this case is Pennymac Holding, LLC. However, Debtor asserts that it is owed nothing - an all or nothing proposition. If Debtor prevails in his litigation, he owns the property free and clear of any lien or obligation to pay Pennymac Holding, LLC. If Debtor is wrong, then Pennymac Holding, LLC owes the property and there is no debt to be paid through a plan.

Cause exists to dismiss this case. There is no good faith, bona fide reorganization being proposed in 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. [15-21257](#)-E-13 DAVID SEARS MOTION TO DISMISS CASE
DPC-1 Pro Se 3-13-15 [[27](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

25. [11-42659](#)-E-13 GARAY/KAREN HARPER CONTINUED MOTION TO COMPROMISE
SDB-3 Scott de Bie CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH CAMP RICHARDSON
RESORT, INC.
12-30-14 [[95](#)]

Tentative Ruling: The Motion to Approve Compromise 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.

The hearing on the Motion to Approve Compromise between Movant and Camp Richardson Resort, Inc. dba the Beacon Bar and Grill and Unigard Insurance Company ("Settlor") is granted.

Garay and Karen Harper, the Chapter 13 Debtors, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with Camp Richardson Resort, Inc. dba the Beacon Bar and Grill and Unigard Insurance Company ("Settlor"). The claims and disputes to be resolved by the proposed settlement are in connection with a "slip and fall" accident suffered by Debtor Karen Harper.

Movant and Settlor has resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement is set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 98):

1. The agreement settles Movant's claim for personal injury, loss of consortium, negligent infliction of emotional distress, and other damages arising from a "slip and fall" incident.
2. The settlement proposes that in exchange for a release of further liability claimed by Movant, Settlor will pay a total of \$200,000.00 to Movant.
3. From that amount, \$80,000.00 is to be paid Movant's counsel in the matter, Travis Black and Joe Weinberger, for attorneys' fees, and \$12,804.49 be paid to such counsel for costs advanced, that \$39,337.92 be paid to resolve medical service liens, and that the net proceeds of \$67,857.59 be paid to Movant.
4. The claim, valued as "unknown" at the time of filing, was disclosed on Movant's Schedule B.

TRUSTEE'S NON-OPPOSITION

David Cusick, the Chapter 13 Trustee, filed non opposition on January 20, 2015.

JANUARY 27, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on April 1, 2015. Dckt. 111. The court ordered Supplemental Pleadings to be filed and served by Debtor on or before March 13, 2015, and Replies, if any, filed and served on or before March 20, 2015.

DEBTORS' SUPPLEMENTAL DECLARATION

The Debtors filed a supplemental declaration on March 10, 2015. Dckt. 122. The Debtors state that there are various lien claims against the proceeds from the proposed settlement by providers of medical treatment to Debtor Karen Harper. These include lien claims of Health Care Advocates of UC Davis Medical Center, Accent for Blue Shield, and COB & R for Medicare.

The Debtors state that for the UC Davis Medical Center claim, the total is \$41,560.25, though the claimant has agreed to accept \$31,783.90 as payment in full. This amount reflects the portion of treatment costs that were not paid by Blue shield. A Notice of Lien was provided to Debtors' prior counsel on

January 7, 2011 but the Debtor states that she was not informed of the lien until the settlement was reached and did not realize her insurance did not cover the costs in full. The Notice is attached to the declaration. Dckt. 124, Exhibit B.

The Debtors state that the Blue Shield claim totals \$8,265.92 but states that the claimant has agreed to accept \$5,510.61 as payment in full. The Debtors state that this is a subrogation claim by the Debtor's insurer. The notice of subrogation claim was submitted to Debtor's attorney on September 21, 2012. Dckt. 124, Exhibit C. Debtor states she was unaware that Blue Shield would file a subrogation claim until September 21, 2012 and therefore did not list it as a contingent claim in the petition.

As to the claim of COB&R on behalf of Medicare, it is a claim for reimbursement for a portion of the amounts Medicare paid for certain medical expenses from April 11, 2012 to May 6, 2013, thus the claim is for post-petition services. The claim is for \$3,405.69 but reduced to \$2,043.41 in compromise. The Debtors attached the demand letter. Dckt. 124, Exhibit D.

The Debtor states that in addition to the medial claims being paid from the settlement, the Debtors' attorneys will be paid a contingency fee and reimbursement of costs. The contingency fee agreements provided that the attorneys are to receive 40% of the settlement and reimbursement of costs. As the settlement totals \$200,000.00, the 40% contingency equals \$80,000.00. The attorneys have agreed to divide the contingency amount equally amongst themselves. Debtor Karen Harper's attorney, Travis Black, will receive \$40,000.00 and Debtor Garay Harper's attorney, Joseph Weinberger, will receive \$40,000.00 of the contingency fee.

The Debtors state that while they understand the court will not be deciding on the attorney fees request as part of the motion, the allowance of the amount is incorporated into the motion. Additionally, the attorneys have itemized costs incurred \$12,804.49.

TRAVIS BLACK'S DECLARATION

Travis Black, Debtor Karen Harper's attorney, filed a declaration on March 10, 2015. Dckt. 123. After restating the case history concerning the "slip and fall," Mr. Black states that out of the \$80,000.00 contingency fee amount, \$32,000.00 would go to Joseph Weingerger, \$32,000.00 to Mr. Black, and \$16,000.00 to Jim Cunningham who is the referring attorney. Mr. Black states that Mr. Cunningham had performed pre-litigation discovery and negotiations and had filed the law suit to pursue discovery before referring the case.

Mr. Black states that, since this was a "universal settlement," there is no break down of the two Debtors' claims.

Mr. Black concludes by reiterating the settled claims. Mr. Black states that the costs incurred by all attorneys total \$12,558.24. The Debtors would net \$68,103.84.

TRUSTEE'S NON-OPPOSITION

The Trustee filed a non-opposition on March 19, 2015. The Trustee states that he has reviewed the declarations and exhibits filed on March 10, 2015, and

that he has no opposition to the Motion being granted.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Under the terms the Settlement all claims of the Estate, including any pre-petition claims of the Debtor, are fully and completely settled, with all such claims released.

Debtor Gary Harper states in the declaration that:

We have had experienced legal counsel represent us in pursuit of the claim. We have been advised by such counsel, and agree, that the amount of \$200,000.00 is a reasonable settlement amount and that, after costs and fees incurred, an eventual net judgment after trial would not be greatly in excess of this amount. This is especially true given the risk of not prevailing at trial.

Dckt. 97.

On its face, upon weighing the factors outlined in *A & C Props* and *Woodson*, the court could determine that the compromise is in the best interest of the creditors and the Estate.

However, the brevity of the Motion, summary testimony, and lack of information about persons being paid outside of the bankruptcy case leave the court unable, and unwilling to grant the motion.

Attorneys' Fees Not Approve As Part of Settlement

The court once again reiterates that attorneys' fees are not approved as part of the instant Motion. On July 28, 2014, the court filed its orders authorizing the employment of Travis G. Black and Joseph B. Weinberger as counsel for the two Movants in asserting the claims being settled. The legal

fees and costs asserted by said attorneys total \$92,804.49. The attorneys have not filed and motions for, and the court has not approved, attorneys' fees and costs. 11 U.S.C. § 330 and 328. Approval of the Settlement does not constitute approval of attorneys' fees and costs.

APPROVAL OF SETTLEMENT

The settlement, on its basic terms meets the Woodson factors and is approved. Counsel for the Debtor shall prepare an order approving the settlement, which order shall specifically identify the medical lien claims to be paid from the settlement funds. The order shall identify the "escrow" who will accept the \$200,000.00 in settlement proceeds and disburse the monies on the lien claims.

The court has authorized the employment of counsel to represent each Debtor in the prosecution of these claims. Orders, Dckts. 74, 75. That order approves, subject to 11 U.S.C. § 328, a contingent fee in the amount of 33 1/3% before filing suit and 40% after suit, plus reimbursement of costs and expenses. The settlement resolves the pending state court lawsuit (Cal. Sup. Ct., El Dorado County, case no. PC20110244), which indicates that the 40% contingency has been triggered. Release and Settlement Agreement, Dckt. 98. The Motion states that there has been \$12,804.49 for costs advanced by counsel. Those costs are not itemized by counsel or Debtor.

The Motion does not expressly request that the court authorize the payment of such fees as provided for in the orders authorizing the employment of counsel. Though the court addressed at the January 27, 2015 hearing on this motion that approval of the settlement did not constitute approval of the attorneys' fees (Civil Minutes, Dckt. 111), no motions for allowance of fees have been filed by the two attorneys. FN.1.

FN.1. The court notes that a third attorney is to be paid a portion of the contingent fee as the "referring attorney." Again, while such a "referral fee" does not surprise or shock the court, in the application for allowance of fees the bankruptcy law basis for authorizing payment from monies of the estate to an attorney not authorized to be employed must be addressed.

The order shall further state who (specially identified contingent fee counsel, bankruptcy counsel, or the Chapter 13 Trustee) will be responsible for holding the settlement proceeds after payment of the medical lien claims, which proceeds shall not be disbursed except on further order of the court. It shall further state that any lawyer liens which Travis G. Black and Joseph B. Weinberger could assert in the claim shall continue in the proceeds pending further order of the court.

As documented in the Travis Black declaration, the \$200,000.00 settlement is not allocated between the claims of the respective Debtors. That has now been left to this court to determine and then allow the Debtors to assert their respective possible exemptions in the settlement proceeds.

The Settlement is Approved and bankruptcy counsel for Debtor shall prepare and lodge with the court a proposed order consistent with this ruling.

26. [13-21559](#)-E-13 EARL MILLER
DPC-1 Timothy Walsh

CONTINUED MOTION 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.

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

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.

DECEMBER 3, 2014 HEARING

The court continued the hearing to April 1, 2015 to allow the Debtor the opportunity to cure any delinquencies. Dckt. 31.

DISCUSSION

No further pleadings have been filed in this case. Debtor has also not filed a modified plan and associated motion. The Debtor has had multiple

opportunities to cure any delinquencies but has failed to provide any responses or evidence showing that after nearly a year of continuances that he has cured these delinquencies.

Therefore, 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.

27. [10-44663-E-13](#) MARY MANNER MOTION TO DISMISS CASE
DPC-7 Al Patrick 3-2-15 [[117](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. 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 Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue to the hearing on the Motion to Dismiss tp 3:00 p.m. on April 14, 2015, to be heard in conjunction with the Motion to Confirm the Modified Plan.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 117.

The Trustee seeks dismissal of the case on the basis that the Debtor is

\$2,820.00 delinquent in plan payments, which represents multiple months of the \$420.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor filed an opposition to the instant Motion on March 12, 2015. Dckt. 125. The Debtor argues that the Debtor has filed and served a motion to Confirm Modified Plan which is set for hearing on April 14, 2015. Further, the Debtor objects to the amount due under the plan. The Debtor asserts that the calculation of 48 months at \$420.00 per month is \$20,160.00 plus six payments of \$115.60 per month totally \$933.60 for payments due through and including March 25, 2015 payment, for a total of \$21,093.50 and not the \$22,680.00 alleged by the Trustee. The Debtor states that she plans to be current under the modified plan on or before March 25, 2015.

While the correct calculation of what has been due is important, the fact remains that the Debtor remains to be delinquent. The Debtor's statement that she "plans to be current" is not evidence that she actually cured the delinquency.

This case was filed on September 16, 2010. After laboring for more than four years in this case, to dismiss now could have disastrous consequences, if Debtor could otherwise confirm the proposed Modified Plan. From a review of the motion and declaration in support of confirmation, it appears that they comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 and Federal Rules of Evidence 601, 602.

The court gives Debtor the opportunity to have this Motion considered in light of the confirmation hearing (at which time all plan payments will have to be current).

28. [11-34064-E-13](#) KIMBERLY/AARON BRUCE
DPC-7 Seth Hanson

MOTION TO DISMISS CASE
3-2-15 [[56](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 2, 2015. 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.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 2, 2015. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,100.00 delinquent in plan payments, which represents multiple months of the \$1,400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any response or evidence that they have cured the delinquency.

Therefore, because the Debtor remains delinquent, 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. 14-27264-E-13 DENNIS JACOPETTI MOTION TO DISMISS CASE
DPC-2 Richard Jare 3-13-15 [[94](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 13, 2015. Dckt. 94.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,000.00 delinquent in plan payments, which represents multiple months of the \$3,000.00 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 February 24, 2015. Dckt. 89. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Furthermore, the Trustee argues that the Trustee's prior objections from the Trustee's Objection to Confirm Plan (Dckt. 33) have yet to be resolved. Namely, this is the Debtor's fourth bankruptcy filing within the past 2 years. Trustee argues that the Debtor has not given sufficient evidence to show he will be able to make the plan payments and complete the plan when the three prior cases were unsuccessful. Below is a table of the prior cases:

Case No.	Date Filed	Date Dismissed
12-26206-13 <i>In Pro Se</i>	March 20, 2012	April 10, 2010 for failure to timely file documents. Dckt. 8.
13-34492-7 <i>In Pro Se</i>	November 13, 2012	January 17, 2014 for failure to appear at the First Meeting of Creditors. Dckt. 19.
14-23007-11 <i>In Pro Se</i>	March 25, 2014	April 14, 2014 for failure to timely file documents. Dckt. 20.

CREDITOR'S OBJECTION

Gary Crow ("Creditor") file an opposition to the instant Motion on March 19, 2015. Dckt. 106. The Creditor argues that the Debtor has demonstrated that he is engaging in a scheme to delay, fraud, and avoid payments to creditors and the case should be converted to a Chapter 7 instead of dismissed. The Creditor argues that the Debtor has filed nine bankruptcy cases since 1992. Case Nos. 92-91108; 93-94830; 06-23654; 06-02395; 12-26206; 13-34493; 14-23007; and 14-27264.

The Creditor states that the Debtor has gross income of about \$7,000.00 per month. The Creditor alleges that in the eight months since the instant case has been pending, Debtor has earned \$56,000.00 to which he has paid \$5,600 into the plan. The Creditor states that he has not received any monies nor have any other creditors have.

DISCUSSION

While the court may consider both conversion and dismissal when there is a pending Motion to Dismiss, the Creditor has not provided a basis for the court determining that a Chapter 7 is in the best interests of creditors. It has not been shown that there is something which the Trustee could better administer than the creditors pursuing Debtor under their state or federal law claims. Creditor does not show how a trustee would recover monies earned by

Debtor during this case or in the future.

On Schedule B Debtor lists owning Pacific Adjustment, LLC, the entity from which he generates his \$250,000.00 in annual income. Schedule B, Dckt. 25; Statement of Financial Affairs Question 1, Dckt. 24. It is not asserted that this LLC represents any substantial asset which could be liquidated by a trustee.

The Debtor's repeat filings are a matter which can be addressed by the Chapter 13 Trustee, U.S. Trustee, or creditors if they determine the filings to be an abuse of the bankruptcy process. Creditor has pending a motion seeking relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), (2), and (4). Dismissal of the bankruptcy case does not deprive the court of jurisdiction and the ability to rule on Creditor's motion which seeks both retroactive relief in annulling the automatic stay and seeking to have the order be effective prospectively for two years in subsequent bankruptcy cases filed by Debtor.

As the Trustee requests, dismissal here appears to be in the best interest of all the parties. The Debtor remains delinquent and has not filed a new amended plan or motion to confirm after the court denied the Debtor's last attempt.

Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 13, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$4,329.00 delinquent in plan payments, which represents one month of the \$4,329.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The 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 March 10, 2015. Dckt. 32. 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).

Debtor has not filed a response to the instant Motion.

Therefore, because the Debtor is delinquent and has failed to file an amended 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.

31. [14-30070-E-13](#) LEAH CHERRY
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-11-15 [[46](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Leah Cherry ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 11, 2015. The court computes that 49 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on February 6, 2015).

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

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

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

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

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

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

32. [13-30371](#)-E-13 JANICE MARCOTTE
DPC-1 Mark Wolff

MOTION TO DISMISS CASE
2-26-15 [[29](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 26, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 26, 2015. Dckt. 29.

The Trustee argues that the Debtor is in material default of the confirmed plan. Pursuant to § 5.06 of the plan, "[i]f the Debtor defaults under this plan, or if the plan will not be complete within six months of its state 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."

The Trustee states that the plan will complete in 80 months as opposed to 60 months in violation of 11 U.S.C. § 1322(d). The Trustee states that the unsecured claims were \$8,687.11 greater than scheduled, thus making the \$435.00 monthly payment plans and the 100% dividend to unsecured creditors not possible within 60 months.

The Trustee states that the Debtor was provided a Notice of Filed Claims on March 14, 2014 which indicated that a motion to modify was required. Dckt. 27.

Pursuant to 11 U.S.C. § 1307(c)(6), dismissal may be proper when a debtor is in "material default by the debtor with respect to a term of a confirmed plan." Under the terms of the confirmed plan, the fact that the Debtor's plan would exceed the 60 month limitation for a plan under 11 U.S.C.

§ 1322(d) and § 5.06 of the plan is a material default. The Debtor has, to date, failed to file an amended plan to address this default.

The Debtor has not filed any responsive pleadings to the instant Motion.

Therefore, because of the Debtor's material default under the plan and 11 U.S.C. § 1322(d), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

33. 14-29671-E-13 DANNY RUE MOTION TO DISMISS CASE
DPC-2 Pro Se 2-25-15 [94]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

filed, and good cause appearing,

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

34. [13-30273-E-13](#) ELIAS ORTIZ MOTION TO DISMISS CASE
DPC-3 Scott Johnson 2-26-15 [[72](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

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

35. [14-30877-E-13](#) TROY HARDIN
Oliver Greene

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-9-15 [[31](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Troy Hardin ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 9, 2015. 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 (\$79.00 due on March 3, 2015).

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

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

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

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

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

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

36. [14-30977](#)-E-13 BOUNTHEU THIENPHETH
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-9-15 [[44](#)]

CASE DISMISSED 2/19/15

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

37. [14-30278](#)-E-13 GARY SHREVES AND KAREN
DPC-2 BAYSINGER- SHREVES
Mark Wolff

MOTION TO DISMISS CASE
2-17-15 [[42](#)]

Notice of Withdrawal filed by Trustee 3/26/15 - Dckt. 62

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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 February 25, 2015. 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 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 instant Motion to Dismiss on February 25, 2015. Dckt. 44.

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 January 13, 2015.

DEBTOR'S OPPOSITION

Debtor filed an opposition to the Trustee's Motion on March 18, 2015. Dckt. 48. Debtor states that she anticipates a large tax return on the 2013 return and that upon completion of her 2014 return, she will be able to determine actual available income. She states that once the tax return is complete, she will be able to satisfy the Trustee's previous objections. She asks that the court deny the motion and be given a reasonable time to amend the schedules, and compute and file an amended Plan.

TRUSTEE'S RESPONSE

The Trustee filed a reply to the Debtor's objection on March 26, 2015. Dckt. 50. The Trustee states that no amended plan has been filed and that a review of Schedule J shows that the Debtor has sufficient income to support the plan. The Trustee states that he proposed that the Debtor provides for the turn over future refunds in the plan to eliminate the need for estimated amounts to be listed on Schedule I or in the plan. The Trustee asserts that the Debtor's instant response was an attempt to further delay filing an amended plan.

The Trustee also states that the Debtor is \$3,201.00 delinquent in plan payments.

DISCUSSION

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).

Furthermore, the Debtor is 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 Debtor's response does not provide evidence for the curing of the delinquency nor provide a legitimate reason why the Debtor has failed to file a new plan since the previous denial. As noted in the Trustee's reply, there are ways in which the Debtor could account for the refunds without the need to constantly amend her plan or schedules.

Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

39. [14-30284-E-13](#) ANGELA CONWAY
Mikalah Liviakis

STATUS CONFERENCE RE: CHAPTER
13 VOLUNTARY PETITION
10-16-14 [[1](#)]

Debtor's Atty: Mikalah R. Liviakis



Notes:

Order setting Status Conference re Procedure for Monthly Plan Payments filed 2/19/15 [Dckt 58]. Attorney, Debtor, and non-Debtor Spouse to appear. No telephonic appearances permitted.

[RHS-1] Supplemental Declaration of Jennifer Hand in Response to Order Setting Status Conference re Procedure for Monthly Plan Payments filed 3/16/15 [Dckt 65]

APRIL 1, 2015 STATUS CONFERENCE

The court set this Status Conference to afford Debtor and her counsel the opportunity to address what may be some more unique health issues relating to performance of the plan. The Trustee has provided a supplemental declaration stating that as of March 2015, the Debtor is \$11,596.00 delinquent in plan payments.

The Debtor and her counsel were ordered to appear at the Status Conference. I

At the Status Conference ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

40. 14-30284-E-13 ANGELA CONWAY
DPC-1 Mikalah Liviakis

CONTINUED MOTION TO DISMISS
CASE
1-5-15 [25]

No 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 Angela R. Conway, Debtor's Attorney, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 5, 2015. Dckt. 25.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,798.00.00 delinquent in plan payments, which represents multiple months of the \$2,899.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

JANUARY 21, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on

February 18, 2015. Dckt. 37. The court ordered that opposition shall be filed and served by January 30, 2015 and replies, if any, filed and served by February 6, 2015.

DEBTOR'S RESPONSE

Debtor filed a response on January 27, 2015. Dckt. 46. The Debtor states that she is in default of her plan payments. Debtor suffers from bipolar disorder and botched the payments because the combination of medications and dosage Debtor was taking was not successful in properly managing the disorder. Debtor states that with her doctor's help, she has found a combination of medication that is working to treat the disorder. Debtor asserts that she will attempt to catch up on the plan payments by February 15, 2015.

Debtor states that she will pay the missed payments from money that she saved while not making the payments as well as income that her husband earns as a Senior Field Engineer, approximately \$9,315.67. He also receives about \$1,823.00 per month from a military retirement pension.

TRUSTEE'S REPLY

The Trustee filed a reply on February 4, 2015. Dckt. 51. The trustee states that Debtor has failed to commence plan payments to date and Debtor is \$8,697.00 delinquent in plan payments. The Debtor's plan calls for payments of \$2,899.00 for 60 months.

FEBRUARY 18, 2015 HEARING

At the hearing, the court continued the hearing and issued a status conference order, to be conducted at 10:00 a.m. on April 1, 2015, for which the Debtor and non-debtor spouse are ordered to appear. Dckt. 56. The court further stated that if the motion to dismiss is resolved and documented arrangements made for the monthly plan payments to be transmitted to the Trustee by the non-debtor spouse, the appearance of the debtor and non-debtor would not be required.

TRUSTEE'S SUPPLEMENTAL DECLARATION

Jennifer Hand, an employee for the Trustee, filed a supplemental declaration, in connection to the set status conference, on March 16, 2015. Dckt. 65. Ms. Hand testifies that the Debtor is \$11,596.00 delinquent in payments to date. Ms. Hand further testifies that the Debtor has failed to commence plan payments to date.

DISCUSSION

To date, the Debtor has not filed any supplemental pleadings or declarations in connection with this Motion.

While the court is sympathetic with the Debtor's medical condition, the Debtor remains delinquent in plan payments. The Debtor does not offer any evidence that she has cured the delinquency.

Debtor, with the assistance of Debtor's current counsel in the 2013 case and another attorney in the 2012 case, have filed and had dismissed two prior

Chapter 13 cases since

- A. Chapter 13 Case No. 13-34363
 - 1. Filed: November 8, 2013
 - 2. Dismissed: August 15, 2014

- B. Chapter 13 case No. 12-32870
 - 1. Filed: July 12, 2012
 - 2. Dismissed: July 25, 2013

Merely having this debtor cycle through multiple bankruptcy cases while she addresses medical issues does not appear to be in anyone's interest. A review of Schedule I discloses that all of Debtor's income is generated by her non-debtor husband. Dckt. 1 at 23. On Schedule J Debtor reports having five children.

The proposed Chapter 13 Plan is having monthly payments of \$2,899.00 for a period of 60 months. Dckt. 7. The Chapter 13 Plan appears to address only one significant claim - Bank of America, N.A.'s claim secured by the Debtor's residence. There is a \$49,000.00 arrearage to be cured, in addition to monthly mortgage payments of \$1,598.00 to be paid as a Class one claim. These payments total \$2,505.41. The Plan further provides for a 100% dividend on general unsecured claims, which are projected by Debtor to be \$2,512.00.

In light of the plan being funded through the non-debtor spouse's monthly wages and retirement (which presumably are community property), there appears to be little reason why there should ever be a default in plan payments. The non-debtor spouse could, and most likely should, be expressly responsible for making the monthly plan payment to the Trustee. While allowing the Debtor to address her health issues, it also appears that such a task is not too great a burden on the non-debtor spouse who is also saving his house through his wife's bankruptcy.

At the hearing, -----

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 ----

41. [11-29785-E-13](#) JAMES PRICE MOTION TO DISMISS CASE
DPC-9 Joseph Canning 3-2-15 [[76](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

42. [15-20385-E-13](#) LUIS RODRIGUEZ MOTION TO DISMISS CASE
DPC-2 Pro Se 3-12-15 [[24](#)]

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 March 12, 2015. By the court's calculation, 20 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 **April 1, 2015.**

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 12, 2015. Dckt. 24.

The Trustee argues that the Debtor did not commence making plan payments and is \$800.00 delinquent in plan payments, which represents multiple months of the \$800.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion. The Debtor has not responded to the instant Motion nor has the Debtor provided evidence that they have cured the delinquency.

Additionally, 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).

Therefore, 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.

43. [14-30186](#)-E-13 EVANGELINA GARIBAY
Charnel James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-17-15 [[60](#)]

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"), Trustee, and other parties in interest on February 17, 2015. The court computes that 43 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 (\$78.50 due on February 11, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$78.50.

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

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

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

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

44. 15-20791-E-13 SHIRLEY STEELE
DPC-2 Pro Se

MOTION TO DISMISS CASE
3-12-15 [[47](#)]

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 March 12, 2015. By the court's calculation, 20 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 on **April 1, 2015**.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on March 12, 2015. Dckt. 47.

First, the Trustee seeks dismissal of the case on the basis that the Debtor has failed to provide the Trustee 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).

Additionally, 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).

The Trustee also argues that this is the Debtor's third bankruptcy filing, while Debtor's husband has filed four prior bankruptcies. The Debtors has not given sufficient evidence to show they will have the ability to make the plan payments and complete the plan where there were several previous failed attempts.

Furthermore, Debtor has failed to appear at the First Meeting of creditors held on March 5, 2015.

Lastly, the Trustee argues that the Debtor's main reason for re-filing a Chapter 13 bankruptcy was to stall the foreclosure process on the real property located at 2900 Polaris Rd, Tahoe City, California, which as been granted relief. The Trustee contends that the totality of Debtor's actions has created an unreasonable delay. FN.1.

FN.1. Since the filing of the Trustee's Motion the court granted relief from the automatic stay with respect to the Polaris Road Property.

Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

45. [14-29692-E-13](#) ANNA STARR

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-2-15 [[39](#)]

CASE DISMISSED 2/19/15

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anna Starr ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 2, 2015. The court computes that 58 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay one or more installment(s).

The Order to Show Cause is discharged as moot.

The court having dismissed this bankruptcy case by prior order filed on February 19, 2015 (Dckt. 43), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged as moot, and no sanctions are ordered.

46. [14-30994-E-13](#) JOHN MONROE
Kristy Hernandez

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-10-15 [[38](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on John Monroe ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 10, 2015. The court computes that 50 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 February 5, 2015).

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

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

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

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

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

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

47. [14-32495-E-13](#) SCOTT HECHTMAN
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-4-15 [[19](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Scott Hechtman ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on February 4, 2015. The court computes that 56 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 30, 2015).

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

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

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

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

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

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

48. [14-30796-E-13](#) THERESA WILLIAMS
DPC-2

MOTION TO DISMISS CASE
2-24-15 [[26](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been dismissed.

49. [13-30998](#)-E-13 RALPH SETTEMBRINO MOTION TO DISMISS CASE
DPC-1 Mary Ellen Terranella 2-26-15 [[45](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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

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

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

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

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

50. [15-20399](#)-E-13 MARLENE MCDANIEL MOTION TO DISMISS CASE
DPC-2 Ashley Amerio 2-25-15 [[19](#)]

Final Ruling: No appearance at the April 1, 2015 hearing is required.

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