

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

May 28, 2014 at 10:00 a.m.

1. [14-20204-E-13](#) GARY HALL
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-14-14 [[34](#)]

CASE DISMISSED 4/18/14

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

IT IS ORDERED that the Order to Show Cause is dismissed as moot, the case having been dismissed.

May 28, 2014 at 10:00 a.m.

- Page 1 of 56 -

2. [12-37606-E-13](#) SCOTT WILLIAMS
TSB-1 Sally Gonzales

MOTION TO DISMISS CASE
4-28-14 [[21](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 April 28, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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.

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

According to the Trustee's calculations the Plan will complete in 112 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Plan payment is \$475.00 or \$451.25 after Trustee fees. Unsecured creditors are to be paid 25%. Filed unsecured claims were \$142,231.59 greater than scheduled. Thus an additional \$35,557.90 must be paid through the confirmed plan. The Debtor was provided a Notice of Filed Claims on 5-7-13, Docket Number 18, which indicated that a motion to modify was required, Page 2, Item (f), if the Notice of Filed Claims includes allowed claims which will prevent the chapter 13 plan from being completed timely.

OPPOSITION

Debtor filed opposition to the motion, stating that Debtor has filed a First Amended Plan to address the issue raised by the Trustee.

A review of the docket shows that Debtor filed the First Modified Plan on May 14, 2014, Dckt. 25. However, no motion to confirm the proposed amended plan has been filed. It does not appear that the Debtor is prosecuting this case.

Based on the foregoing, 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 granted and the Chapter 13 case is dismissed.

3. [12-38907-E-13](#) PAUL/CYNTHIA BRICK MOTION TO DISMISS CASE
TSB-1 Curt Hennecke 4-28-14 [[20](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

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

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$2,110.00 delinquent in plan payments, which represents multiple months of the \$1,055.00 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 filed the Motion to Dismiss based on the Debtor's failure to provide proof of social security number at the First Meeting of Creditors held on March 6, 2014.

DEBTOR'S RESPONSE

Debtor responds, admitting that he has failed to provide the Trustee with proof of social security number and that he is still waiting for his new driver's license in the mail to be able to verify his social security number. Debtor seeks an opportunity to convert the case to one under Chapter 7. Debtor states that due to death in the family and unexpected slow down in his construction income and a pending IRS audit, Debtor states he is not a good candidate for Chapter 13 relief. Debtor expects to file an application to convert the case to one under chapter 7 on or before the court date.

An election to convert the case to one under Chapter 7 has not been filed to date. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

6. 13-34624-E-13 DEBRA RANDELL MOTION TO DISMISS CASE
TSB-1 Mark Briden 5-2-14 [56]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

7. [14-23325-E-13](#) ESMATULLAH NAYEBKHIL
DPC-1 Peter Cianchetta

MOTION TO DISMISS CASE
5-12-14 [[20](#)]

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 May 12, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,200.00 delinquent in plan payments, which represents multiple months of the \$1,200.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The meeting has been continued to May 29, 2014.

Also, the Trustee argues that the Debtor has failed to 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). Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(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.

8. [14-21926-E-13](#) RONALD/JEANNIE AHLERS MOTION TO DISMISS CASE
NLE-2 Scott Coben 4-22-14 [[33](#)]

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 - Late 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 April 22, 2014. 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).

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

The Trustee argues that the Debtor did not commence making plan payments and is \$4,905.00 delinquent in plan payments, which represents one month of the \$4,905.00 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.

DEBTOR'S RESPONSE

Debtor filed a late response, along with an ex parte motion seeking authorization the late filing of the Response to the Motion to Dismiss. Counsel states that the response was not calendared properly and that Mr. CoBen was involved in a jury trial in Sacramento County Superior Court that prevented him from discovering that fact earlier. Based on the Motion and Declaration provided by Counsel, the court allows the late filed response to this 9014-1(f)(1) Motion to Dismiss.

However, Debtor states that the plan will be current prior to the date of this hearing. No evidence has been provided that the plan payments are in fact current. Further, the Debtors do not explain what caused the default or how the Debtors can make multiple plan payments in one month when they are providing all of their projected disposable income to make just the regular monthly payment.

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.

9. [09-41828-E-13](#) SANTIAGO SANCHEZ
DPC-4 Douglas Jacobs

MOTION TO DISMISS CASE
3-18-14 [[94](#)]

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 March 18, 2014. By the court's calculation, 71 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$388.44 delinquent in plan payments, which represents multiple months of the \$138.43 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Counsel for Debtor filed a response, stating that Debtor has caught up the missing payments and is up to date. Counsel also states that Debtor will make the payment due on May 25, 2014 before the hearing on this matter.

However, no evidence or testimony of the Debtor has been provided that the plan payments are up to date.

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

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

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

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

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

10. [14-21728-E-13](#) NETANE VILINGIA MOTION TO DISMISS CASE
NLE-2 Pro Se 4-15-14 [[23](#)]

CASE DISMISSED 4/18/14

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

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

11. [11-30429-E-13](#) LEONARDO GARCIA-VELASQUEZ MOTION TO DISMISS CASE
DPC-9 Pro Se 4-29-14 [[83](#)]

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,200.00 delinquent in plan payments, which represents multiple months of the \$2,135.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a response, stating that he believes he is only behind with three (3) payments instead of four payments. Debtor states he will be making these three payments by May 24, 2014, which will bring him current. Debtor states he is behind the three payments due to unexpected costs with repairs to his home; such as, installing a new electrical box, repairing plumbing (main sewage line) and repairs to the kitchen. Debtor states that these unexpected costs were not budgeted, but had to be repaired for the safety of his home.

However, Debtor not providing evidence that he is in fact current with his plan payments, the court grants the motion.

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

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

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

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

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

12. 13-36132-E-13 **THAN PHUNG**
NLE-1 **Aaron Koenig**

**MOTION TO CONVERT CASE OR
DISMISS CASE FOR FAILURE TO
TIMELY CONFIRM A PLAN
4-22-14 [40]**

Tentative Ruling: The Motion to Dismiss or Convert 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 April 22, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the Motion to Dismiss or Convert the case to 10:00 a.m. on September 10, 2014.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$91.21 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee'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 4, 2014. 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).

The Trustee also states that the Trustee's prior objection raised the issue that the Debtor's business property may be worth \$75,000.00 more than scheduled, and \$60,600 of business assets may not have been scheduled. This objection was sustained on March 4, 2014.

DEBTOR'S RESPONSE

Debtor filed a response, stating that he filed an ex-parte motion to dismiss the case because he cannot file or set for confirmation a feasible Chapter 13 plan or comply with the Trustee's or the Court's requirements. Debtor states he did not engage in bad faith or abuse the bankruptcy process. Debtor seeks to have this case dismissed.

DISCUSSION

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

At the hearing on the Trustee's Objection to Confirmation, the court noted,

At the hearing the Debtor responded that he could not "undo what was previously said" and therefore would be unable to confirm a plan. While the court does not find the Debtor's responses sufficient, and in some situations credible, it may be possible for this Debtor to propose and confirm a good faith plan. This will require the presentation of credible, plausible evidence, more than "what I say now under penalty of perjury is true, but what I said before under penalty of perjury is not true."

As discussed below, the Debtor and his counsel in an adversary proceeding did not conduct themselves in a manner consistent with federal court proceedings. This appears to have carried over to this case and the plan which is now before the court. This does not preclude the Debtor from prosecuting the case and confirming a plan, but demonstrates that the Debtor and his counsel need to reconvene and reassess how they will prosecute this case.

Minutes, Dckt. 33. The court further noted that Debtor has a pending adversary proceeding, set for hearing July 7th and 8th in this department. In order for this court to maintain jurisdiction and continue the adversary proceeding, the court will convert this case to one under Chapter 7.

In responding to this Motion, the Debtor does not provide any evidence. Rather, he merely relies upon arguments advanced by his Bankruptcy Attorney as to the Debtor having filed and prosecuting this case in good faith. Response, Dckt. 46. While stating that he "cannot" file or set for confirmation a feasible chapter 13 plan or comply with the trustees [sic] and courts [sic] requirements, he offers no testimony as to what onerous requirements for a Chapter 13 debtor are beyond his ability to perform or why now, after having filed several bankruptcy cases the Debtor is not able to fund a Chapter 13 Plan.

The arguments of Debtor do not appear to be supported by his conduct in this and the prior bankruptcy case. Debtor commenced his first bankruptcy case on July 19, 2011. Bankr. E.D. Cal. 11-37725 ("First Case"). (For all his bankruptcy cases the Debtor has been represented by knowledgeable, experienced bankruptcy attorneys.) It took Debtor almost a year to confirm a Chapter 13 Plan, with the order confirming the Third Amended Chapter 13 Plan being filed by the court on March 13, 2012.

The Third Amended Plan required the Debtor to make payments of only \$336.00 a month for a period of sixty months. Third Amended Plan, 11-37725 Dckt. 47. This was modified to monthly plan payments of even less, requiring only \$192.00 a month for the final 43 months of the Plan. *Id.*, Second Modified Plan and Order Confirming Second Modified Plan, Dckts. 107, 119. The Debtor testified under penalty of perjury that he could make the plan payments, he reconfirmed the income and expense information on Schedules I and J, and that he was proceeding in good faith. Declaration, *Id.*, Dckt. 50. He also testified under penalty of perjury, "I sincerely wish to complete this case and feel I can do so if my Chapter 13 Plan is confirmed according to the proposed plan terms." *Id.*

In obtaining confirmation of the Second Modified Plan, the Debtor testified under penalty of perjury that he has \$29,216.04 in monthly income and (\$29,216.04) in monthly expenses, yielding the \$192.00 monthly plan payment. *Id.*, Declaration, Dckt. 109. He also provided, under penalty of perjury, current income and expense statements. *Id.*, Exhibit A, Dckt. 110. The court believe the Debtor's testimony that from the \$29,216.04 a month in income, the Debtor could produce the nominal \$192.00 monthly payment to fund the Second Modified Chapter 13 Plan.

The Chapter 13 filing by the Debtor resulted in the filing of a nondischargeability complaint by Xu Ling Zhang. 11-2684. The Complaint sought damages in excess of \$100,000.00 and a determination that such damages were nondischargeable pursuant to 11 U.S.C. § 523(a)(6) being willful and malicious injuries having been cause by the Debtor. The Complaint was filed on October 24, 2011, and an answer (in *pro se*) was filed by the Debtor on November 23, 2011. On December 27, 2011, knowledgeable, experienced bankruptcy counsel substituted in as the counsel for the Debtor in the Adversary Proceeding.

On March 20, 2012, the knowledgeable and experienced bankruptcy

counsel for the Debtor file a Motion to withdraw as counsel for the Debtor in the Adversary Proceeding. *Id.*, Dckt. 17. Counsel sought to withdraw because the parties and witnesses spoke Cantonese Chinese and counsel could not provide the necessary interpreter services. Counsel withdrew the first motion and filed a second motion on April 4, 2012, seeking to withdraw for the same reasons. The court granted the Motion and the Debtor proceeded in *pro se*. *Id.*, Order, Dckt. 39.

The Adversary Proceeding progressed, with the court making a determination pursuant to Federal Rule of Civil Procedure 56(g) and Federal Rule of Bankruptcy Procedure 7056 that specific facts were not in material dispute. *Id.*, January 29, 2013 filed Order Dckt. 51. The court denied Plaintiffs request for entry of summary judgment against the Debtor. *Id.*, March 6, 2013 filed Order, Dckt. 83.

On March 11, 2013, new Adversary Proceeding counsel ("Litigation Attorneys") for Debtor filed a substitution of attorneys and a motion for relief from the order determining facts not to be in material dispute. *Id.*, Dckts. 100, 93. The court denied the Motion. *Id.*, Order filed April 2, 2013, Dckt. 108. The court addressed in detail the grounds stated in the motion, the basis for the prior determinations and why the Debtor failed to state proper grounds (or that there was any material dispute as to the limited facts determined by the court), and concluded,

" The Debtor wants to pursue fruitful settlement negotiations. Such has been the Debtors ability for the last 18 months, and since February 8, 2013 with his current counsel. If the case is going to settle, then it will settle. It is hardly a surprise to anyone in the legal profession or business community that most matters settle on the eve of trial. Delaying for six months offers little to the settlement process. Current counsel for the Debtor now has two months of representation of the Debtor, which should be sufficient to engage in meaningful settlement negotiations.

The court has not granted the Plaintiff summary judgment in this Adversary Proceedings and has limited the relief only to specific facts as determined pursuant to Federal Rule of Civil Procedure 56(g). The Debtors ability to present a defense exists. The court also notes that there is no contention that the matters deemed admitted could actually be denied by the Debtor in good faith. Rather, it appears that the Debtor and counsel would just like to have those items aside to further tip the last minute negotiations in their favor.

It also needs to be remembered that the transaction underlying the Adversary Proceeding is not a simple consumer transaction. Rather, it is an alleged commercial international transaction. This Debtor is not a simple consumer debtor. On his Statement of Current Monthly Income the Debtor lists gross business income of \$28,916.04 a month. Dckt. 1. On the Statement of Financial Affairs the Debtor lists having gross income of \$487,972 in 2009 and

\$415,796 in 2010. For the first half of 2011, the Debtor listed having \$173,496 in gross income (the bankruptcy case being filed on July 19, 2011). Statement of Financial Affairs Question 1, Dckt. 1.

The court has not granted Plaintiff summary judgment in this Adversary Proceeding. Though summary adjudication has been made on some items, they are not determinative of the issues for nondischargeability of debt. Many of the determinations are general in nature, providing general intention, but not specific impact. The Debtor can still defend himself, even at this late date, and can negotiate in good faith. Plaintiff, while having obtained summary adjudication, is aware that it still has the burden of proof in prevailing on the issues of nondischargeability, and not merely providing liability on a debt."

Id., Civil Minutes, Dckt. 105.

The court continued the pre-trial conference from March 27, 2013 (*Id.*, Scheduling Order, Dckt. 42) to July 31, 2013. *Id.*, Order, Dckt. 107. The pre-trial conference was again continued pursuant to a stipulation of the parties to allow them to engage in mediation. *Id.*, Stipulation, Dckt. 109; Order, Dckt. 113. The judge conducting the court supervised mediation issued his order that no settlement had been reached and the mediation concluded. *Id.*, September 24, 2013 filed order, Dckt. 117.

The pre-trial conference was again continued by the court to January 8, 2014. *Id.*, Order, Dckt. 122. This was to set the schedule for the filing of pre-trial conference statements. Following the pre-trial conference the court set a two-day trial in the Adversary Proceeding for July 7 and 8, 2014. *Id.*, Order, Dckt. 132.

On January 14, 2014, the Debtor's Litigation Attorneys filed a "Request for Judicial Notice" and a Memorandum re Jurisdiction. *Id.*, Dckts. 128, 129. The Memorandum argued that the Debtor's Chapter 13 case, 11-37725, had been dismissed, and therefore no proper grounds existed for this court to exercise federal court jurisdiction over the tort claim in the Complaint.

The Debtor and his Litigation Attorneys in the Adversary Proceeding were correct, the First Bankruptcy Case had been dismissed by order of the court filed on November 19, 2014. 11-37725, Dckt. 123. That order was entered pursuant to the Chapter 13 Trustee Notice of Default and Motion to Dismiss filed on October 11, 2013. *Id.*, Dckt. 120. The Notice stated a \$521.00 default in payments - an amount equal to less than three months of required minimal plan payments of \$192.00 a month.

The Notice of Default and Motion to Dismiss was served on the Debtor and Debtor's experienced bankruptcy counsel. No response was filed and no effort made by the Debtor to either cure the default or save his confirmed Chapter 13 Plan with the minimal \$192.00 a month plan payment. The court dismissed the First Bankruptcy Case without hearing or it having been noticed to creditors. *Id.*, Certificate of Service, Dckt. 121.

What the Debtor and his Litigation Attorneys failed to disclose to the court in contending that federal court jurisdiction did not exist for the Adversary Proceeding because the First Bankruptcy case was dismissed, was that the Debtor, with the assistance of knowledgeable and experienced bankruptcy, filed a second bankruptcy case (the current case before this court) on December 30, 2013. The current case was originally assigned to the Hon. Christopher M. Klein, bankruptcy judge in the Eastern District of California. Following the standard procedure in this District, on February 11, 2014, Judge Klein transferred the current case to Department E of the Court so that it would be heard by the same judge who was assigned the First Case. This District has a policy of assigning subsequently filed cases to the judge having the original case to avoid the appearance of judge shopping by parties.

While the Debtor's Litigation Attorneys may protect being ignorant of the fact that the second bankruptcy case was filed on the heels of the first being dismissed for minimal plan payment defaults, the Debtor cannot claim such ignorance. It is questionable how experienced Litigation Attorneys would be "left in the dark" about the Debtor refileing a case.

The conduct of Litigation Attorneys was suspect in that it "withdrew" the attempted dismissal of the Adversary Proceeding the day after this current case was reassigned to the judge who presided over the First Case.

Debtor also seeks, by ex-parte motion, to dismiss the current Chapter 13 case. Motion, Dckt. 44. The Motion states no grounds upon which the requested relief is based, and only quotes 11 U.S.C. § 1307(b). This fails to meet the minimal pleading requirements that a motion must state with particularity both the grounds and relief requested. Fed. R. Bank. P. 9013.

The Debtor has filed a declaration, again providing testimony under penalty of perjury, stating that he is having difficulty in prosecuting this case because,

- A. The Debtor cannot afford to obtain a valuation of his business;
- B. The Debtor cannot afford to obtain a valuation of his real property.

Dckt. 45. These valuation issues arose in connection with the Chapter 13 Trustee's objection to confirmation of the Chapter 13 Plan in this case. Notwithstanding an increasing real estate market, the Debtor has stated under penalty of perjury in Schedule A in this case that his real property has a value of only \$250,000.00, which he stated under penalty of perjury in the First Bankruptcy Case that it has a value of \$325,000.00. Objection to Confirmation, Dckt. 18. The Trustee notes that the claim secured by the real property has been decreased to (\$288,738.45) on Schedule D in the current case, which stated under penalty of perjury on Schedule D in the First Bankruptcy Case to be (\$326,268.18). The decrease in value, if accurate, would result in there being no net value in the estate, however if the original value is accurate (without taking into account any appreciation in the real estate market since 2011), there would be \$36,261.82 equity for

the estate.

The Trustee's Objection also is based on the Debtor failing to provide a value for his business which generates monthly income of \$23,000 to \$41,000 in monthly gross income. Schedule I, Dckt. 1 at 26. In addition, the Chapter 13 Trustee identified an additional \$60,600.00 in business assets not listed on Schedule B which were discovered on the Case Business Questionnaire.

The declaration provides no testimony as to what efforts were made to engage a real estate agent or broker, or appraiser, to express an informed opinion as to the value of the real property. No testimony is provided as to the bids received from any business valuation companies. Rather, the Debtor merely states that whatever the cost is, it is more than the Debtor wants to see paid for accurate valuation information being provided in his bankruptcy case.

The Debtor also testifies in his declaration that if the court will dismiss his case, he will agree to not have the Adversary Proceeding dismissed. Presumably he is stating that he consents to a federal court litigating the issues in the Adversary Proceeding even if his bankruptcy case is dismissed. This is repeated in the Response to the Trustee's Motion to Dismiss. Dckt. 46.

In denying the Debtor's attempt to have the Adversary Proceeding dismissed because the First Bankruptcy Case was dismissed, the court in detail reviewed federal court jurisdiction and the Constitutional limits thereto. 11-2684, Civil Minutes, Dckt. 145. In short, Article III of the United States Constitution requires that there be a case or controversy arising under (1) the United States Constitution; (2) laws of the United States; (3) Treaties, cases affecting effecting ambassadors, other public Ministers and Consuls; (4) cases of admiralty and maritime, and (5) controversies to which the United States is a party, between two or more States, between citizens of different States, between citizens of the same State claiming lands under grants of different states, and between a state, or citizens thereof, and foreign states, citizens, and subjects. U.S. Constitution, Art. III, Section 8 (grant of power to Congress to enact uniform bankruptcy laws); 11 U.S.C. §§ 1334, 157. Absent such grounds existing, persons do not have the right or power to "consent" or "agree" to have an issue that falls outside of the Constitutional requirements adjudicated by a federal court. The federal judicial system is not merely a "for hire" litigation service.

The Adversary Proceeding is one to determine whether a debt is nondischargeable in this bankruptcy case. Such is a core proceeding. 11 U.S.C. § 157(b)(1). Federal court jurisdiction exists to determine the Adversary Proceeding, including all federal law and state law issues pursuant thereto.

However, if the court were to accept the Debtor's offer to dismiss the bankruptcy case, then it is questionable what federal court jurisdiction would exist to adjudicate the Adversary Proceeding. The court does not accept Debtor's offer to dismiss the federal law matters and basis for federal court jurisdiction. The court cannot understand how Debtor's bankruptcy counsel, who must have conferred with Debtor's Litigation

Attorneys, would have proposed to the purported "consent" to federal court jurisdiction. One could well envision if the court were led into dismissing the bankruptcy case Debtor's Litigation Attorneys coming to court demanding that the Adversary Proceeding be dismissed in light of the federal court jurisdictional basis being dismissed. Debtor's Litigation Attorneys could well argue that no matter how "well intentioned" the Debtor and Debtor's bankruptcy counsel was, they could not create federal court jurisdiction where it did not constitutionally exist. FN.1.

FN.1. It may well be that this attempt to get the bankruptcy case dismissed is part of an innocent request of the Debtor, bankruptcy counsel and Litigation Attorneys which was made without any research or determination that good faith legal and factual grounds existed for the relief requested. Such conduct of just asking for "stuff" regardless of whether it is legally or factually sound rarely produces good results.

Or it may be that this is a repeat attempt to mislead the court into letter the Debtor avoid his minimal obligations as a bankruptcy debtor. Here there are substantial issues concerning the property of the estate, assets which were not scheduled, and possible significant value for the estate. The Debtor does not get to possibly misrepresent facts to the court and when caught, slip out the back door.

Grounds have been shown to convert this case to one under Chapter 7. Dismissal clearly is not in the best interests of the estate or creditors. It appears that the Debtor has, and continues, to manufacture defaults under the Chapter 13 Plan and failure to fulfill his minimum obligations to truthfully and accurate disclose his assets. Dismissal of this case, and quite possibly having the Debtor file a Round Three Bankruptcy Case is not in the interests of the estate or creditors.

Before converting this case, the court continues the hearing to allow the Debtor, his Litigation Attorneys, the Chapter 13 Trustee, Creditors, the U.S. Trustee, and other parties in interest address the matter. Quite possibly, the Debtor and his attorneys realizing that they cannot dip in and out of bankruptcy, the Debtor may find renewed vigor for prosecuting the case in good faith and actually has a bankruptcy plan which should be confirmed. Creditors, the Chapter 13 Trustee, and U.S. Trustee may believe that conversion to Chapter 11 and appointment of a trustee is more appropriate than conversion. The Debtor reports having a business which generates between \$20,000.00 and \$40,000.00 a month. This appears to be a substantial business which may have significant value. The operation of the business by a Chapter 11 trustee may well better protect the interests of the bankruptcy estate and interests of creditors, as well as better protect the good faith, bona fide interests of the Debtor.

The hearing on the Motion to Dismiss is continued to 10:00 a.m. on September 10, 2014. The Chapter 13 Trustee shall file and serve any supplemental or amended pleadings on or before August 1, 2014; The U.S. Trustee shall file, if any, pleadings relating to the Chapter 13 Trustee's Motion, and recommendation of whether the case should be dismissed, converted to Chapter 7, or converted to Chapter 11, or the Motion should be denied, on or before August 8, 2014; and the Debtor shall file and serve supplemental pleadings or responsive pleadings on or before August 22, 2014.

The court extends the time period for consideration of this Motion and the Parties in Interest to file pleadings so the court may make the correct, informed decision on whether the case should be dismissed, converted to Chapter 7, or converted to Chapter 11 and a trustee appointed, to allow the Debtor to meet with his counsel and determine whether it is in his best interests to prosecute this case and a bankruptcy plan.

Cause exists to convert this case. The motion is granted and the case is converted to one under chapter 7.

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 or Convert 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 10:00 a.m. on September 10, 2014.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall file and serve any supplemental or amended pleadings on or before August 1, 2014.

IT IS FURTHER ORDERED that the U.S. Trustee shall file, if any, pleadings relating to the Chapter 13 Trustee's Motion, and recommendation of whether the case should be dismissed, converted to Chapter 7, or converted to Chapter 11, or the Motion should be denied, on or before August 8, 2014.

IT IS FURTHER ORDERED that the Debtors shall file and serve supplemental pleadings or responsive pleadings on or before August 22, 2014.

13. [13-35033-E-13](#) SAMUEL TAPIA
NLE-1 John Downing

MOTION TO DISMISS CASE
4-22-14 [[40](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 22, 2014. 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.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,190.00 delinquent in plan payments, which represents multiple months of the \$1,190.00 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 March 25, 2014.

A review of the docket shows that Debtor filed a new plan set for hearing July 1, 2014. However, Debtor offers no explanation or response for the delay in setting the Plan for 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.

14. [14-22734-E-13](#) GERALD/VIRGINIA MARTINEZ ORDER TO SHOW CAUSE - FAILURE
Michael O'Dowd Hays TO PAY FEES
4-22-14 [[20](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on April 17, 2014). The court docket reflects that on April 28, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

The Order to Show Cause is discharged.

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

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

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

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

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

15. [12-34737-E-13](#) TERESA NABER
TSB-2 Aaron Koenig

CONTINUED MOTION TO DISMISS
CASE
2-14-14 [[47](#)]

CONT. FROM 3-19-14

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 14, 2014. 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 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.

PRIOR HEARING

The Chapter 13 Trustee ("Trustee") alleges that Debtor materially breached the Chapter 13 Plan ("Plan"). Section 5.03 of the Plan provides that Debtor is in default if the plan will not be completed within six months of its stated term, not to exceed 60 months. According to the Trustee, the Plan will complete in 76 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). And it is also material default by Debtor with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6).

Debtor responds, requesting the court allow a hearing on March 19, 2014, for counsel to get more time to get sufficient documents from the creditor in order to substantiate the creditor's claim.

New counsel for the Debtor (Debtors former counsel having recently passes away unexpectedly) reported that they have assembled the necessary

information and confirmed creditors claims to proceeding with structuring an amended plan. Counsel and Debtor request that they be afforded additional time. The court continued the hearing to allow more time for the parties to obtain sufficient documents in order to substantiate the creditor's claim.

SUPPLEMENTAL RESPONSE

After the hearing, Debtor and her counsel looked into the debtor's finances to see if she could increase her plan payments based on either recent income changes or decreased expenses. Unfortunately, after looking at all income and expense reduction possibilities, debtor's disposable monthly income on an Amended Schedule I and J does not show the amount necessary to be paid into the plan in order for it to be feasible.

Based on the foregoing, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

16. [08-36047](#)-E-13 JOHN/CHARLENE JOHNSON MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 4-10-14 [[107](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

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

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 April 25, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,330.00 delinquent in plan payments, which represents multiple months of the \$1,665.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3).

DEBTOR'S RESPONSE

Debtor filed a response, stating that he filed a Motion to Confirm Chapter 13 plan and set a hearing date for July 1, 2014.

A review of the docket shows that Debtor filed an Amended Plan and Motion to Confirm on May 13, 2014. Dckts. 44-49.

Based on the foregoing, 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.

18. [11-29052-E-13](#) STANLEY/MARIGRACE EARLE MOTION TO DISMISS CASE
DPC-2 Robert Hale McConnell 4-28-14 [[90](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,536.00 delinquent in plan payments, which represents multiple months of the \$1,009.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

20. [12-28856-E-13](#) KEVIN/BRANDEE MCCANN MOTION TO DISMISS CASE
TSB-1 David Foyil 4-28-14 [[67](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be a and *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.

21. [14-21158-E-13](#) ANDRE WILLIAMS MOTION TO DISMISS CASE
TSB-1 Scott M. Johnson 4-25-14 [46]

Final Ruling: No Appearance at the May 28, 2014 hearing 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 (*pro se*) and Office of the United States Trustee on April 25, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the Motion to July 9, 2014 at 10:00 a.m.

The Chapter 13 Trustee moves the court for an order dismissing the case pursuant to 11 U.S.C. § 1307 for several reasons. First, the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on March 20, 2014. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Second, Debtor is \$3,604.00 delinquent in plan payments. The case was filed on February 7, 2014. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Third, Debtor not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, Trustee has requested but Debtor has failed to provide the Trustee with answers to certain question about the Debtor's business (including recent profit and loss, a list of employees, and other questions set out in a Business Case Questionnaire mailed to the Debtor), and other documentation (copies of bank statements, business tax returns, licenses, and any insurance policies).

OPPOSITION BY DEBTOR

Debtor, previously *pro se*, filed an opposition to the motion through his attorney of record, Sagria Law, P.C. Debtor responds by stating that he has attempted to litigate his case Pro Se to the best of his ability. Due to the complex nature of his case, the Debtor has retained Sagaria Law, P.C., to represent him in his Chapter 13 Case.

Debtor states that his attorney has reviewed all the claims, objections, motions, and requests filed in the case and is currently in the process of obtaining documents from the Debtor, including but not limited to, the most recent state and federal income tax returns he has filed, six months of profit & loss statements from the Debtor's business, six months of payment advices from the non-filing spouse, documents related to the Chapter 13 Trustee, including 2012 and 2013 income tax returns and six months of bank account statements for all open accounts. Debtor requests more time to allow Debtor and his newly retained counsel to address the issues raised.

CONTINUANCE

The court will grant Debtor's request for a continuance, to allow Debtor and Debtor's counsel to review Debtor's business paperwork; resolve the Trustee's issues with Debtor's delinquency, failure to appear the Meeting of Creditors and produce tax transcripts and responses to Trustee's request for information on Debtor's business; and to represent Debtor and resolve all outstanding motions and matters in Debtor's case.

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

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

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

IT IS ORDERED that the hearing on Debtor's Motion to Dismiss is continued to 10:00 a.m. on July 9, 2014.

22. [10-26059-E-13](#) DANIEL/KIMBERLY MEIDINGER MOTION TO DISMISS CASE
DPC-8 Peter G. Macaluso 4-29-14 [71]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on September 10, 2014.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,524.50 delinquent in plan payments. To date the Debtor has paid a total of \$54,265.00, so the Debtor is delinquent \$3,524.50 in plan payments. Debtor's monthly plan payment is \$1,175.00.

Prior to the hearing on this matter, another payment of \$1,175.00 will come due. As a result, Debtor will need to pay \$4,699.50 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

OPPOSITION TO THE MOTION TO DISMISS

Debtors' counsel states that he has difficulty contacting the Debtors to resolve the delinquency. Debtors made a payment in April, but it was insufficient to cure the delinquency. Debtor has been in the Plan for 50 months, and have only 10 months in their plan remaining. Counsel requests a 30 day continuance to make further attempts to contact Debtors and file a new plan.

Pursuant to Debtors' counsel's request, the Motion to Dismiss will be continued to [date] at [time] to give Debtors' counsel additional time to contact Debtors to resolve the delinquency.

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 September 10, 2014.

23. [13-31261](#)-E-13 TUESDIA JOHNSON MOTION TO DISMISS CASE
DPC-2 Mohammad M. Mokarram 4-28-14 [[55](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,325.00 delinquent in plan payments. To date, Debtor has paid a total of \$3,875.00, with the last payment received on March 10, 2014.

Prior to the hearing on this matter, another payment of \$775.00 will come due. As a result, Debtor will need to pay \$3,100.00 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6). Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

24. [13-32861-E-13](#) JAMES/BETH FRY MOTION TO DISMISS CASE
TSB-1 Peter G. Macaluso 4-30-14 [60]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 30, 2014. By the court's calculation, 32 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. No appearance required.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,875.00 in plan payments. To date, Debtor has paid a total of \$3,875.00, with the last payment received on March 10, 2014. The Trustee shows that a total of \$6,200 has come due, so Debtor is delinquent \$2,325.00 in plan payments. Debtor's monthly payment is \$775.00.

Prior to the hearing on this matter, another payment of \$775.00 will

come due. As a result, Debtor will need to pay \$3,100.00 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6). Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

25. [13-22362-E-13](#) ELENITA AQUINO MOTION TO DISMISS CASE
TSB-1 Bert M. Vega 4-28-14 [48]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee moves for an order dismissing the case pursuant to 11 U.S.C. § 1307 because the Debtor is in material default pursuant to § 5.03 of the plan, which provides that if Debtor defaults under the plan, or if the plan will not complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion pursuant to Local Bankruptcy Rule 9014-1.

According to the Trustee's calculations, the Plan will complete in 107 months as opposed to the 52 months proposed. This exceeds the maximum time allowed under 11 U.S.C. § 1322(d). The plan payment is \$2,743.56 monthly, or \$2,606.38 net of the Trustee's fees. After payment of the Class 1 monthly contract installment payment of \$1,918.69, \$687.69 remains to pay all other creditors. \$64,753.23 remains to be paid on mortgage arrears and Class 5 creditors. Thus, \$64,753.23 divided by \$687.69 is 94 months. Debtor has completed 13 months of the plan.

It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is \$9,363.54 delinquent under the terms of the modified plan filed on November 27, 2013. Payments totaling \$35,666.28 have

become due. Debtor has paid a total of \$26,302.74 to the Trustee, with the last payment posted on April 1, 2014.

DEBTOR'S RESPONSE

Debtor states that she will file a Modified Plan prior to the scheduled hearing date, that will address "all the issues in the Trustee's Motion to Dismiss Case" dated April 28, 2014. Dckt. No. 52.

A review of the docket shows that no modified plan has been filed. Debtor offers no reasonable explanation as to why she has not filed a modified plan or actively prosecuted the case to this point in time. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

26. [13-32466-E-13](#) TANESHIA WRAY MOTION TO DISMISS CASE
TSB-2 Steven A. Alpert 4-30-14 [60]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required.

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on the basis that Debtor is delinquent in plan payments and has not filed a pending plan. Debtor is \$388.85 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$440.00 is due on May 25, 2015. The case was filed on September 25, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$2,490.00 into the plan to date.

Debtor's Motion to Confirm (PLG-1) was heard and denied by this court on March 25, 2014. Dckt. No. 57. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

holding that:

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

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

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

27. [14-20671-E-13](#) CATHERINE TROUT ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
4-2-14 [[20](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on March 28, 2014). The court docket reflects that on April 10, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

29. [13-35878-E-13](#) MICHAEL JOHN/TARA HOOPER MOTION TO DISMISS CASE
TSB-1 Peter G. Macaluso 4-29-14 [[43](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 because there is no plan pending. Trustee's Objection to Confirmation, NLE-1, was sustained by the court at the hearing held on April 8, 2014. Dckt. No. 42.

OPPOSITION TO MOTION TO DISMISS

Debtors respond that they will have filed and served an amended plan prior to the date of this hearing. Dckt. No. 47. A review of the docket, however, shows that Debtors have not yet filed a new plan or a motion to confirm a plan. Debtors offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

holding that:

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

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

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

30. [14-21379-E-13](#) CYNTHIA SILVERIA AMENDED MOTION TO DISMISS CASE
NLE-2 Gary Ray Fraley 4-24-14 [22]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 24, 2014. 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.

Debtor is \$4,206.17 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$4,206.17 is due on April 25, 2014. The case was filed on February 14, 2014. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the Plan to date. Debtor has not filed a response, explaining why the delinquency occurred, and why it will not occur in the future.

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. [14-22679-E-13](#) DENNIS FLORES MOTION TO DISMISS CASE
DPC-1 Mark Lapham 5-12-14 [47]

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)(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 May 12, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on the following grounds:

1. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 1, 2014. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. 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).
2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
3. 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).
4. Debtor is \$594.67 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$594.67 is due on May 25, 2014. The case was filed on March 17, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date.

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

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

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

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

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

32. [09-29681-E-13](#) FERNANDO/ALAPE GELVERIO MOTION TO DISMISS CASE
DPC-5 Peter G. Macaluso 4-28-14 [75]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on September 10, 2014.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$20,000.58 delinquent in plan payments. To date, Debtor has paid a total of \$276,601.50, with the last payment received on February 24, 2014. Trustee shows a total of \$296,602.08 is due; Debtor is delinquent \$20,000.58 in plan payments. Debtor's monthly payment is \$5,000.01.

Prior to the hearing on this matter, another payment of \$5,000.01 will come due. As a result, Debtor will need to pay \$25,000.09 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

OPPOSITION TO MOTION TO DISMISS

Debtors respond by stating that they are now in the 60th month of the Plan and has paid \$281,601.51 to the Trustee over the last 59 months. The last payment is due May 25, 2014. Dckt. No. 79.

Debtors experienced some unexpected financial difficulties in the last few months, which included their heating unit breaking down and the costs to replace it. In addition, Debtor state that they have a senior in high school, and that there have expenses with their daughter's last year of school and applications for college. ¶ 6, Declaration of Fernando Gelverio and Alape Gelverio, Dckt. No. 80.

Additionally, Debtors state that they changed their attorney of record for this case, because Debtors' previous counsel law firm is no longer in business. Debtors retained new counsel, and express that they are aware of their delinquency and are working hard to remedy the problem. The Debtor have three payments left for a total of \$15,000 and request that the court to continue this hearing approximately (90) ninety days to allow the

them to make the payment and complete this 2009 case.

The court will continue the hearing on this Motion to Dismiss to [date] at [time] to allow Debtors to work with their newly-retained counsel to resolve their acknowledge delinquency in payments under their Plan.

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

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

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

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

33. [14-20181](#)-E-13 DANTE THOMAS MOTION TO DISMISS CASE
NLE-2 Michael H. Luu 4-22-14 [[31](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 22, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. That requirement was met.

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

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

The case was filed on January 9, 2014, and the Debtor has yet to

confirm a plan. The Trustee's Objection to Confirmation, NLE-1, was heard and sustained on March 25, 2014, and Debtor has failed to amend the Plan and set a confirmation hearing date.

Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

34. [11-29785-E-13](#) JAMES PRICE MOTION TO DISMISS CASE
DPC-7 Joseph M. Canning 4-29-14 [62]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,263.49.70 delinquent in plan payments. To date, Debtor has paid a total of \$18,722.35, with the last payment received on January 14, 2014. Trustee shows a total of \$20,985.84 is due; Debtor is delinquent \$2,263.49 in plan payments. Debtor's monthly payment is \$582.94.

Prior to the hearing on this matter, another payment of \$582.94 will come due. As a result, Debtor will need to pay \$2,846.43 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

35. [14-22586-E-13](#) OSCAR/MARIA SAEZ MOTION TO DISMISS CASE
DPC-1 Dan Nelson 5-12-14 [27]

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)(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 May 12, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on the basis that Debtors are causing unreasonably delay that is prejudicial to creditors.

Debtors did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 1, 2014. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The meeting has been continued to May 29, 2014 at 10:30 am.

Additionally, Debtors are \$819.00 delinquent in plan payments, and the next scheduled payment of \$819.00 is due on May 25, 2015. The case was filed on March 14, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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

36. [13-35991](#)-E-13 RAMON CRUZ MOTION TO DISMISS CASE
TSB-1 Karl-Fredric J. Seligman 4-10-14 [[100](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 10, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

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

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on the following grounds:

1. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on February 6, 2014, and at the continued meeting held on April 3, 2014. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325.

Attendance at the Meeting of Creditors is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The meeting has again been continued to May 29, 2014 at 10:30 am.

2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
3. 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).
4. Debtor is \$840.00 delinquent in plan payments to date, and the next scheduled payment of \$210.00 is due on April 25, 2014. The case was filed on November 22, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13.
5. Debtor filed a plan, Dckt. No. 79, on March 25, 2014. The plan has not been served on all interested parties and no Motion to Confirm has been set for a hearing date. The Notice of Chapter 13 Bankruptcy Case was filed on January 10, 2014, Dckt. No. 44. A confirmation hearing is required to be held not earlier than 20 days and no later than 45 days after the date of the meeting of creditors, unless the court determines that it would be in the best interests of the creditors and the estate should hold the hearing sooner. 11 U.S.C. § 1324(b). The first meeting of creditors was held on February 6, 2014.
6. Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Deutsche Bank National Trust Co. on a second mortgage on Debtor's residence under the plan, but has not filed a Motion to Value to date.
7. Debtor has not properly prosecuted his case. The case was filed on November 22, 2013. This is Debtor's fourth filing, and Debtor has now failed to appear at two meetings of creditors in this case, one on February 6, 2014, and one on April 3, 2014. In Debtor's last case, Case No. 13-30689, Debtor also failed to appear at a meeting of creditors. That case was dismissed on October 18, 2013.

CASE DISMISSED 5/5/14

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

39. [13-35492-E-13](#) VERONICA WHEELER ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
4-14-14 [33]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on April 8, 2014). The court docket reflects that on May 5, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions are ordered, and the case shall

proceed.

40. 13-32493-E-13 WILLIAM/JANET FORTIER MOTION TO DISMISS CASE
TSB-2 Robert P. Huckaby 4-30-14 [[54](#)]

Final Ruling: No appearance at the May 28, 2014 hearing is required.

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

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

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

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

The Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307 on the basis that Debtors' Motion to Confirm (RPH-1) was heard and denied by this court on March 25, 2014. Dckt. No. 51, but no subsequent amended plan or Motion to Confirm has been filed to date.

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

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

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

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

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

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