

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

June 24, 2015 at 10:00 a.m.

1. [13-20501](#)-E-13 RAYMOND/CHRISTINE BELCHER MOTION TO DISMISS CASE
DPC-1 Nekesha Batty 5-20-15 [[55](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

2. [14-31901](#)-E-7 SUSAN YORK MOTION TO DISMISS CASE
DPC-4 Harry Roth 5-15-15 [[80](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The case having previously been converted to one under Chapter 7 (Dckt. 86), 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 converted to one under Chapter 7, 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.

June 24, 2015 at 10:00 a.m.

3. [12-33903-E-13](#) JOHN MOORE
DPC-2 Scott Johnson

MOTION TO DISMISS CASE
5-19-15 [[76](#)]

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 May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 76. The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,705.00 delinquent in plan payments, which represents multiple months of the \$1,566.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

John Moore ("Debtor") filed an opposition to the instant Motion on June 10, 2015. Dckt. 80. The Debtor states that he has prepared a modified plan. The Debtor alleges that he is currently seeking a loan modification with Wells Fargo Bank, N.A. The Debtor asserts that he requires additional time to gather the necessary documents and proposes suspending payment on the pre-filing mortgage arrears to Wells Fargo Bank, N.A. until the modification may be reviewed.

The Debtor's response does not address the \$2,705.00 delinquency. Instead, the Debtor states that he is applying for a loan modification and that a modified plan has been prepared. However, no Motion to Confirm Modified Plan has been filed nor any motion to approve loan modification. The Debtor could

propose a plan that utilizes the "Ensminger Provisions" which allows for the Debtor to seek a modification while providing adequate protection payments to the creditor. The Debtor here seeks to just suspend any arrearage payments to Wells Fargo Bank, N.A. Just no making payment on or providing for the secured claim of a creditor is not proper nor cures the grounds for dismissal.

OVERVIEW OF CURRENT AND PRIOR BANKRUPTCY CASES

This is not Debtors first bankruptcy case in recent years. Debtor, represented by the same counsel as in the current case, filed a Chapter 13 bankruptcy on March 26, 2012. Bankr. E.D. Cal. 12-25838 ("First Bankruptcy Case.") That case was dismissed on July 13, 2012. The chapter 13 plan proposed in the First Bankruptcy Case drew the objection of that chapter 13 trustee who asserted that the proposed plan term was approximately 200 months, well in excess of the 60 month maximum provided in 11 U.S.C. § 1322(d). 12-25838, Dckt. 20.

Wells Fargo Bank, N.A., the creditor holding the claim secured by Debtor's real property, also filed an objection to confirmation. First, that the proposed chapter 13 plan failed to provide for curing the arrearage on the Bank's claim. Second, that the Debtor's financial information failed to show that the plan was feasible and the Debtor could make sufficient plan payments for creditor's secured claim. *Id.*, Dckt. 27.

The court overruled the Bank's objection, but sustained the Trustee's objection. Further, the court issued a conditional order of dismissal, requiring the Debtor to file and prosecute an amended Chapter 13 Plan by a date certain. *Id.*; Order, Dckt. 29.

When the Debtor failed to prosecute an amended plan by the June 19, 2012 deadline, the court entered an order on July 13, 2012, dismissing the First Bankruptcy Case. *Id.*, Dckt. 33.

Debtor then filed the current bankruptcy case on July 30, 2012. This court confirmed Debtor's Chapter 13 Plan in the current bankruptcy case on September 27, 2012. Order, Dckt. 43. On September 17, 2014, the Trustee filed a motion to dismiss the bankruptcy case because Debtor failed to increase the plan payments to fund an increased in the post-petition payments on the claim secured by Debtor's residence. Motion, Dckt. 49. The Trustee's motion was itself dismissed without prejudice based on Debtor prosecuting a proposed modified Chapter 13 Plan.

The court denied Debtor's motion to confirm the proposed Modified Chapter 13 Plan. Order, Dckt. 75, filed February 4, 2015.

The Trustee filed the pending Motion to Dismiss on May 19, 2014, more than three months after the court denied confirmation of the proposed Modified Chapter 13 Plan. No new proposed modified plan or motion to confirm had been, or to this day, has been filed by Debtor. Debtor has demonstrated that he cannot prosecute a confirmable chapter 13 plan which Debtor can perform in this case.

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

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

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

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

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

4. [10-44204-E-13](#) IRMA SANCHEZ CONTINUED MOTION TO DISMISS
DPC-2 Michael Hays CASE
1-21-15 [[58](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

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

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

The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 a.m. on June 30, 2015.

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

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

DEBTOR'S REPLY

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

Debtor's confirmed Chapter 13 plan called for monthly payments of \$391.00 for 60 months to pay the \$9,625.00 value portion of the \$18,863.00 claim of National Auto Finance and 1% of her unsecured claims which were estimated to total \$56,619.00. The \$9,625.00 claim is being paid with 6% interest with a monthly dividend of \$186.00 and a total of \$11,160.00 would have been paid at \$186.00 monthly. The Debtor's plan also calls for payment of \$2,500 to her attorney and the Trustee's compensation was estimated by Debtor's counsel at 9%.

The Debtor asserts that she has been paying "more" than would be necessary to satisfy the requirements of her plan because the total of the unsecured claims that were actually filed only came to \$11,579.35, thereby resulting in the creditors who chose to act diligently and enforce their rights receiving more than the minimum 1% which was required of the Debtor. Additionally, the creditors who have acted diligently to assert their claims also benefit from the Chapter 13 Trustee's fee being computed on a lower 5.2% than originally projected by Debtor.

The Debtor asserts that a review of the "Case Profile" shows that the car creditor has actually been paid thru January 26, 2015 a total of \$14,752.38 which is in excess of the \$11,160.00 called for in the plan. No explanation has been provided for this overdisbursement to the car creditor and apparent underdisbursement to the creditors holding general unsecured claims.

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

TRUSTEE'S REPLY

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

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

FEBRUARY 18, 2015 HEARING

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

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on April 4, 2015 to be heard in conjunction with the Motion for Hardship Discharge. Dckt. 83.

APRIL 14, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to allow the Debtor to file a proposed modified plan. Dckt. 86.

DISCUSSION

The Debtor has filed a modified plan and a Motion to Confirm on May 19, 2015. Dckt. 91 and 92. The hearing on the Motion is set for 3:00 p.m. on June 30, 2015. In light of this, the court continues the instant Motion to 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm

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 3:00 p.m. on June 30, 2015 to be heard in conjunction with the Motion to Confirm Plan.

5. [15-20706-E-13](#) CAROL GUENTHER
DPC-1 Lucas Garcia

MOTION TO DISMISS CASE
5-20-15 [[22](#)]

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 22. The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,100.00 delinquent in plan payments, which represents one month of the \$2,100.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Carol Lee Guenther ("Debtor") filed a declaration to the instant Motion on June 10, 2015. Dckt. 26. The Debtor states that her house was flooded on April 3, 2015 and had to make \$2,700.00 in repairs. The Debtor states that she did not file a claim with her homeowner's insurance because of her high deductible and would have to pay for it all out of pocket. To catch up, the Debtor states that she has made cuts to her monthly budget, including cancelling cell phones for the month, cutting back on groceries, and carpooling. The Debtor states that she will be able to cure the delinquency by June 16, 2015.

Unfortunately, the Debtor and Debtor's counsel have not provided evidence that she has actually cured the delinquency. Debtor merely projects that she should have the default cured in the future. While the court

understands that an unexpected expense cause the Debtor to fall behind, the fact remains that the Debtor is delinquent.

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

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

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

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

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

6. [14-20708-E-13](#) NOEL ORLANDO
DPC-1 Scott Hughes

MOTION TO DISMISS CASE
5-19-15 [[102](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 102. The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,210.00 delinquent in plan payments, which represents multiple months of the \$3,805.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file any supplemental papers to show that the Debtor has cured the delinquency.

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

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

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

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

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

7. [15-22909-E-13](#) JENNIFER RIANDA MOTION TO DISMISS CASE
DPC-2 Lucas Garcia 6-1-15 [[30](#)]

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 June 1, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 1, 2015. Dckt. 30.

The Trustee argues that the Debtor did not commence making plan payments and is \$9,500.00 delinquent in plan payments, which represents one month of the plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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 Debtor has not filed any supplemental papers in opposition to the instant Motion.

Therefore, due to the failure to commence plan payments and failing to appear at the Meeting of Creditors, 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. 10-51111-E-13 SUSAN HUGHES
DPC-6 Nekesha Batty

MOTION TO DISMISS CASE
5-19-15 [[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 May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 94. The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,384.00.00 delinquent in plan payments, which represents multiple months of the \$784.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Susan Hughes ("Debtor") filed a response to the instant Motion on June 10, 2015. Dckt. 98. The Debtor states that she is in the process of modifying the plan and will have one filed prior to the hearing.

However, a review of the docket shows that no proposed modified plan has been filed nor has the Debtor provided evidence that the delinquency has been cured.

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

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

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

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

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

9. 15-22811-E-13 DENNIS/KIM CAMPBELL MOTION TO DISMISS CASE
DPC-2 Timothy Walsh 6-3-15 [34]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 3, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 3, 2015. Dckt. 34. The Trustee argues that the Debtor did not commence making plan payments and is \$2,865.00 delinquent in plan payments, which represents one month of the \$2,865.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Debtor presented no opposition to the Motion.

Therefore, because the Debtor failed to commence plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

10. [13-22012-E-13](#) KENNETH/KRISTINE THOMPSON ORDER TO SHOW CAUSE - FAILURE
Peter Macaluso TO PAY FEES
5-19-15 [[83](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Kenneth and Kristine Thompson ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 19, 2015. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$25.00 due on May 5, 2015).

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

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

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

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

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

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

11. [13-33914-E-13](#) LAURA BRENNAN MOTION TO DISMISS CASE
DPC-1 David Foyil 5-21-15 [[105](#)]

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 May 21, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 21, 2015. Dckt. 105. The Trustee argues that the case should be dismissed because the Debtor failed to provide for the priority claim of the County of Amador Animal Control (Proof of Claim No. 2) in the amount of \$7,436.00. Section 2.13 of the confirmed plan makes this failure a breach of the plan. The Trustee states that the Debtor was provided a notice of filed Claims on June 11, 2014 (Dckt. 99) which listed the priority claim and noted that it was not provided for in the plan.

Laura Brennan ("Debtor") filed an opposition to the instant Motion on June 4, 2015. Dckt. 109. The Debtor argues that the claim on County of Amador Animal Control is based on the judgment of The Feed Barn. The Debtor states that the court granted a motion avoiding the judicial lien of The Feed Barn County Store. Dckt. 94. Attached to the Proof of Claim No. 2 is a copy of the judicial lien which the court avoided on March 3, 2014. Dckt. 94. The Debtor argues that the Trustee has mistakenly filed the instant Motion because the claim of Amador Animal Control is properly accounted for in Class 2 of the confirmed plan in light of the court granting the motion avoiding the lien in which it is based upon.

A review of the Proof of Claim No. 2 filed by Amador Animal Control shows that it is based upon the judicial lien of The Feed Barn County Store. A review of the confirmed plan shows that The Feed Barn County Store is listed as a Class 2c claimant, based on the court granting the Motion to Avoid the Judicial Lien. As such, it appears that the claim of Amador Animal Control is, in fact, provided for in the plan.

However, Proof of Claim No. 2 is filed as a priority claim - Creditor asserting that it is entitled to priority status pursuant to 11 U.S.C. § 507(a)(8) as a tax or penalty owing to the government. Debtor has not objected to Proof of Claim No. 2 or Creditor asserting it as a priority claim. Attached to Proof of Claim No. 2 is an Order for Restitution, in which Debtor is ordered to pay \$3,391.79, plus interest from date of sentencing, to Animal Barn, identified as the victim.

Debtor has not objected to Proof of Claim No. 2 or the Creditor asserting it as a priority claim. It is settled law in the Ninth Circuit that the a proof of claim is *prima facie* evidence of the validity of the claim, for which an objecting party has the initial burden of rebutting that presumption. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). That *prima facie* validity has not been rebutted, or even challenged by Debtor. Merely arguing that it is not a secured claim does not allow Debtor to ignore a filed priority claim.

Therefore, the Motion to Dismiss is granted and the Chapter 13 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.

12. [14-27114-E-13](#) SHAUN/AMANDA STAUDINGER MOTION TO DISMISS CASE
DPC-2 Scott Johnson 5-5-15 [[35](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [14-31014-E-13](#) ROBERT SLAMA
DPC-3 Scott Johnson

MOTION TO DISMISS CASE
5-20-15 [[54](#)]

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 54.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,450.00 delinquent in plan payments, which represents multiple months of the \$1,225.00 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 April 28, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Robert Slama ("Debtor") filed an opposition to the instant Motion on June 10, 2015. Dckt. 58. The Debtor states that they are working to draft a proposed modified plan and will have one filed prior to the hearing.

However, a review of the docket shows that no proposed plan nor Motion to Confirm has been filed by the Debtor.

Therefore, due to the failure to cure the delinquency and to file a plan following the denial of the previous Motion to Confirm, 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. [15-22116-E-13](#) JOHN/NATALIE DYER
DPC-2 David Ritzinger

MOTION TO DISMISS CASE
6-10-15 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 10, 2015. Dckt. 25. 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 June 2, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. In reviewing the court's prior ruling, the original chapter 13 plan was denied confirmation because Debtor failed to provide for the distribution to creditors of an amount equal to the non-exempt assets of the Debtor.

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).

Therefore, due to the Debtor's failure to file a new plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

15. [11-48418-E-13](#) MATTHEW HOGUE MOTION TO DISMISS CASE
DPC-2 Nekesha Batty 5-19-15 [[85](#)]

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 May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to

Dismiss on May 19, 2015. Dckt. 85. The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,885.50 delinquent in plan payments, which represents multiple months of the \$870.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Matthew Hogue ("Debtor") filed a response to the instant Motion on June 10, 2015. Dckt. 89. The Debtor attorney argues that Debtor is in the process of modifying the plan and expects to have a Motion to Modify Plan prior to the hearing.

A review of the Debtor's case shows that no proposed modified plan nor Motion to Confirm has been filed.

Therefore, due to Debtor's failure to cure the delinquency, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

16. [15-20520-E-13](#) MICHAEL HAGERTY
DPC-2 Pro Se

MOTION TO DISMISS CASE
5-22-15 [[29](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 22, 2015. Dckt. 29. The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,634.00 delinquent in plan payments, which represents multiple months of the \$1,317.00 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 further 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 April 14, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has failed to file any responsive papers that states he cured the delinquency and that he has filed a new proposed plan. A review of the docket shows no new proposed plan or Motion to Confirm.

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

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

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

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

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

17. [15-20620-E-13](#) CAREY WHITE MOTION TO DISMISS CASE
DPC-2 Peter Cianchetta 5-15-15 [[38](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 15, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 15, 2015. Dckt. 38.

The Trustee argues that the Debtor did not commence making plan payments and is \$10,220.07.00 delinquent in plan payments, which represents multiple months of the \$3,406.69.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee's Motion further 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 April 14, 2015. A review of the docket shows that Debtor

has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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).

Lastly, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in response to the instant Motion.

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

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

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

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

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

18. [13-33721](#)-E-13 MICHAEL/SHAUNIE BRIGGS MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 5-21-15 [[33](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

19. [15-21423](#)-E-13 ELINA MACHADO
Muoi Chea

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-1-15 [[31](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Elina Machado ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 1, 2015. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$73.00 due on May 26, 2015).

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

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

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

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

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

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

20. [15-21423](#)-E-13 ELINA MACHADO
Muoi Chea

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-1-15 [[22](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Elina Machado ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 1, 2015. The court computes that 84 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on March 27, 2015).

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

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

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

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

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

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

21. [15-21927-E-13](#) MICHAEL BARBIERI
DPC-2 Pro Se

MOTION TO DISMISS CASE
6-5-15 [[22](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 5, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 5, 2015. Dckt. 22. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,053.00 delinquent in plan payments, which represents one month of the \$1,053.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 2, 2015. Dckt. 19. 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).

Further, the Trustee's Motion asserts that the Debtor's unsecured debt is too large for a Chapter 13. The State Board of Equalization filed a Proof of Claim on April 1, 2015, claiming an unsecured debt of \$1,239,686.79. Proof of Claim. 1. Under 11 U.S.C. § 109 (e), the maximum unsecured debt allowed in a Chapter 13 is \$383,175.00.

Because Debtor has fallen behind in payments, has not filed a new motion to confirm, and because Debtor's unsecured debt exceeds the maximum amount allowed in a Chapter 13, 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.

22. [12-37428-E-13](#) DREW/LORETTA ODABASHIAN MOTION TO DISMISS CASE
DPC-1 Scott Coben 5-19-15 [[37](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 37. The Trustee seeks dismissal of the case on the basis that the Debtor is \$850.00 delinquent in plan payments, which represents multiple months of the \$425.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed a response to the instant Motion showing that they have cured the delinquency.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

23. [14-26329](#)-E-13 HATTIE FERRETTI MOTION TO DISMISS CASE
DPC-2 Lucas Garcia 5-20-15 [[40](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

24. [15-21729](#)-E-13 JIM SINGH ORDER TO SHOW CAUSE - FAILURE
David Foyil TO PAY FEES
6-8-15 [[46](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Jim Singh ("Debtor"), Trustee, and other parties in interest on June 8, 2015. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on June 2, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

25. [10-42830-E-13](#) MATTHEW/VERONICA LUDWIG MOTION TO DISMISS CASE
DPC-1 Nekesha Batty 5-19-15 [[40](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 19, 2015. Dckt. 40. The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,039.00 delinquent in plan payments, which represents multiple months of the \$878.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because Debtor has fallen behind in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

26. [15-22730](#)-E-13 CHARLES/MARYLOU HODGE ORDER TO SHOW CAUSE - FAILURE
Scott Shumaker TO PAY FEES
6-8-15 [[59](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Charles and Marylou Hodge ("Debtor"), Trustee, and other parties in interest on June 8, 2015. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on June 2, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. [The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

the case is dismissed.

27. [15-23332-E-13](#) KATHERINE GERRARD
DPC-2 David Silber

MOTION TO DISMISS CASE
6-10-15 [[25](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 10, 2015. By the court's calculation, 14 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 Debtors, 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 10, 2015. Dckt. 25. The Trustee argues 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 Trustee also asserts that the Debtor did not commence making plan payments and is \$272.63 delinquent in plan payments. 11 U.S.C. §1307(c)(4)

permits the dismissal or conversion of the case for failure to commence plan payments.

Further, Trustee states that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Finally, the Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. A review of the docket shows that no motion to confirm has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). The Trustee also points to numerous issues with the proposed plan, including failures to completely fill out all necessary aspects, including failing to include the proposed dividend to unsecured creditors or to provide for the treatment of a creditor.

CREDITOR'S REPLY IN SUPPORT OF TRUSTEE'S MOTION

WF Homeowners Association, Inc. ("Creditor") filed a supplement to Trustee's Motion to Dismiss on June 15, 2015. Dckt. 29. Creditor states that Debtor filed this case April 23, 2015 in order to stop foreclosure of her home on April 28, 2015. Creditor argues that the incomplete state of Debtor's petition indicates that Debtor filed her petition for the sole purpose of delaying Creditor from foreclosing.

Creditor further asserts that Debtor has a history of filing for Bankruptcy to delay creditors. Creditor states that it set an initial foreclosure date for August 6, 2013. Two days before Creditor could foreclose, Debtor filed for Bankruptcy on August 4, 2013. Creditor argues that Debtor's history of filing for Bankruptcy to stop foreclosure is evidence of bad faith and an intent to cause unreasonable delay.

DISCUSSION

Because Debtor has failed to appear at the 341 Meeting, commence plan payments, submit tax returns to the trustee, and because Debtor has not properly served her Plan or filed a motion to confirm, cause exists to dismiss this case. There appears to possibly be a bad faith filing in which the Debtor does not act in accordance with her duty as a debtor and a fiduciary of the estate as evidenced by her skeletal filings and failure to provide for all claims. The motion is granted and the case is dismissed.

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

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

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

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

28. [11-33034-E-13](#) RICHARD/ANGELA PARRISH
DPC-6

MOTION TO DISMISS CASE
3-16-15 [[81](#)]

Tentative Ruling: The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 28, 2015. By the court's calculation, 56 days' notice was provided.

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments 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 Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, served a Notice of Default and Application to Dismiss on March 16, 2015 pursuant to Local Bankr. R. 3015-1(g). Dckt 81.

Trustee argues that the Debtor has failed to make all payments due under the plan. As of March 15, 2015, payments are delinquent in the amount of \$6,581.96. An additional payment of \$3,290.99.00 will become due on December 25, 2014.

On April 28, 2015, the court issued an Order for Hearing on Notice of Default setting the hearing for 10:00 a.m. on June 24, 2015. Dckt. 84.

TRUSTEE'S RESPONSE

The Trustee filed a response to the Order Setting Hearing on May 26, 2015. Dckt. 86. The Trustee states that the Debtor has not set a hearing within 28 days of mailing of the notice of default nor brought the plan current or file and serve a Motion to Modify, pursuant to the Notice of Default. The Trustee states that as of May 21, 2015, the Debtor is delinquent \$13,163.94.

APPLICABLE LAW

Local Bankr. R. 3015-1(g) provides the following:

(g) Dismissal Due to Plan Payment Defaults.

- (1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.
- (2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.
- (3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either
 - (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or
 - (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.
- (4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13

plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

- (5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to either LBR 9014-1(f)(1) or (f)(2).

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,163.94 delinquent in plan payments, which represents multiple months of the \$3,290.99 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in connection with the Notice and Order Setting Hearing nor has the Debtor provided any evidence that the Debtor has cured the delinquency.

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

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

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

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments filed by 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 case is dismissed.

29. [13-27835-E-13](#) JEFFREY/MONICA JACKSON CONTINUED MOTION TO DISMISS
DPC-1 Kristy Hernandez CASE
12-15-14 [[116](#)]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on December 15, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

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

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

DEBTOR'S OPPOSITION

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

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

JANUARY 21, 2015 HEARING

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

DEBTORS' SUPPLEMENTAL DECLARATION

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

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

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

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

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

APRIL 1, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on May 27, 2015. Dckt. 128.

DEBTORS' SUPPLEMENTAL DECLARATION

The Debtors filed a supplemental declaration on May 22, 2015. Dckt. 131. The Debtors state that the Franchise Tax Board filed an amended Claim with a balance of \$0.00. The Debtors state that this should resolve the Trustee's objection

TRUSTEE'S WITHDRAWAL

On June 12, 2015, the Trustee filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case. Dckt. 133

DISCUSSION

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 May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's decision is to grant the Motion and this Chapter 13 case is dismissed.

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 125. The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,042.00 delinquent in plan payments, which represents multiple months of the \$4,948.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Kimberly T. Oliva and Joseph T. Oliva ("Debtors") filed a reply to the instant Motion on June 12, 2015 which the Trustee filed on behalf of the Debtors due to them filing the response with the Trustee's office in error. Dckt. 129. Debtors reply as follows:

1. That Debtor is currently Pro Se, in this matter. Debtor's counsel, John Tosney, passed away and Hughes Financial Law took over their matter. Debtor's allege that they have made numerous phone calls and emails to Hughes Financial Law, all of which have been ignored for months.

2. Debtors request to continue the hearing. They allege that continuing the hearing will enable them to cure their delinquency.
3. Debtors assert that they will make a payment in the amount of \$3,000.00, and proof will be emailed to Yvette Sanders; as the TFS website is currently down.
4. Debtors allege that Hughes Financial Law is presently in possession of approximately 50 documents that Debtor's Mortgage Company, Ocwen, has sent them. These documents state that Debtors are 180 days past due, which they allege is not true given the fact that the Trustee makes these payments. Debtor's allege that they have been threatened with foreclosure. Debtor's reached out to Hughes Financial Law, but were unable to contact them. Eventually, Hughes responded and requested that Debtor's send them the letters. Debtor's sent Hughes Financial Law the requested letters, and have been unable to get in contact with Hughes since then.

DEBTORS' RESPONSE

The Debtors, through their counsel at Hughes Financial Law, filed an additional response to the Motion on June 15, 2015. Dckt. 131. The Debtors state that they experienced unexpected expenses, which caused them to fall behind in plan payments. The Debtors are nearing the completion of the plan and request a continuance to allow them to become current.

This response does not address what Debtors have previously stated to be counsel's failure to communicate with Debtor or counsel's ability to communicate with and represent these Debtors going forward.

DISCUSSION

There appears to have been some communication errors between the Debtors and Debtors' counsel. This is evidenced by the Debtors having to file their own response rather than their hired counsel. The response filed by Debtors' counsel does not address any of the concerns raised by the Debtors in their hand written response.

Based on Debtor's testimony under penalty of perjury, the court confirmed a Chapter 13 Plan which required Debtors to make monthly plan payments of \$4,948.00. Debtor their financial limits and the strain placed on them in their declaration filed on November 3, 2014. Dckt. 110; Income and Expense Exhibits, Dckt. 112. Based on this prior testimony, the court determined, and there now exists, no "extra" monies to fund the plan. Debtors are at least \$9,872.95 in default and have no ability to make up that default.

In their most recent declaration, prepared by Debtor's counsel of record, Debtor testifies that they do have "extra" monies and can make an extra \$3,000 payment the week of June 8, 2015, and then have "extra" monies to cure the other \$7,000 of arrearage, as well as make the ongoing \$4,948.00 on requirement monthly plan payments. The court does not find this testimony credible that, now facing having the case dismissed, Debtor testifies that they

can easily generate the "extra" income to cure the arrearage, but couldn't generate "extra" income to pay what Debtor contends were extraordinary expenses.

There does not appear to be an ability of Debtor to complete a plan in this case. Though there being only six months left for Debtors in this case, Debtors and counsel have failed to provide the court with a basis for not dismissing this case.

Cause exists to dismiss this case, and the Motion is granted.

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

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

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

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

31. [15-20336-E-13](#) **ANTWANETTE RAYMOND** **ORDER TO SHOW CAUSE - FAILURE**
David Foyil **TO PAY FEES**
3-26-15 [53]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Antwanette Raymond ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 26, 2015. The court computes that 90 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on March 23, 2015).

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

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

32. [15-20336-E-13](#) **ANTWANETTE RAYMOND** **ORDER TO SHOW CAUSE - FAILURE**
David Foyil **TO PAY FEES**
5-26-15 [[71](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Antwanette Raymond ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 26, 2015. The court computes that 35 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on May 20, 2015).

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 5, 2015. Dckt. 77. The Trustee seeks dismissal of the case on the basis that the Debtor is \$470.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 14, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Because Debtors have failed to maintain plan payments and have not

filed a new motion to confirm plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

34. 12-34737-E-13 TERESA NABER MOTION TO DISMISS CASE
DPC-2 Mary Ellen Terranella 3-23-15 [116]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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, and the case shall proceed in this court.

35. [15-23039](#)-E-13 MONICA JAIME
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-29-15 [[11](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

<p>The case having previously been dismissed, the Motion is dismissed as moot.</p>

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.

36. [15-21641](#)-E-7 GANESH RAJAPPAN
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-6-15 [[22](#)]

CASE CONVERTED TO CH. 7 ON
5/22/15

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The case having previously been converted to one under Chapter 7, 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 converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

37. [15-23041](#)-E-13 PAULA RUIZ
DPC-1 Stephen Murphy
WITHDRAWN BY M.P.

MOTION TO DISMISS CASE
6-1-15 [[20](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

38. [15-23241-E-13](#) STAN/VICKY MARSHALL MOTION TO DISMISS CASE
DPC-2 Ashley Amerio 6-5-15 [[26](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

39. [13-20942-E-13](#) JOHNNY SEZA MOTION TO DISMISS CASE
DPC-1 Robert Fong 5-11-15 [[19](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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.

40. [12-32244-E-13](#) SHANE/YAMILETH SHANNON MOTION TO DISMISS CASE
DPC-8 Richard Chan 5-18-15 [65]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 18, 2015. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 18, 2015. Dckt. 65. The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,080.00 delinquent in plan payments, which represents multiple months of the \$3,070.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

The Motion to Dismiss the Chapter 13 case filed by the

Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

41. [14-27944-E-13](#) MICHAEL/DANNIELLE MOTION TO DISMISS CASE
DPC-1 CARDENAS 5-20-15 [[42](#)]
Nikki Farris

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 42. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,300.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Because Debtor has fallen behind in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

42. [15-22644-E-13](#) DANIEL/MERCEDES RIGGLEMAN MOTION TO DISMISS CASE
DPC-3 Scott Johnson 6-3-15 [[42](#)]

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 June 3, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 3, 2015. Dckt. 42. The Trustee argues that the Debtor did not

commence making plan payments and is \$3,820.00 delinquent in plan payments, which represents multiple months of the \$1,910.00 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 has failed to file any supplemental papers to the instant Motion showing that the delinquency has been cured.

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

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

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

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

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

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 56. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,402.00 delinquent in plan payments.

Debtor's Opposition, filed June 10, 2015, states that Debtor mailed a cashier's check for \$1,402.00 on June 9, 2015. Dckt. 60. Debtor also intends to have another \$1,402.00 payment mailed on June 23, 2015 to cover another delinquent payment that came due May 25, 2015. With these payments, Debtor will be current.

While the Debtor has cured the original delinquency, the Debtor has admitted to being delinquent in the amount of \$1,402.00 for the May 25, 2015 payment. Given Debtor's limited projected disposable income, Debtor will be perpetually in default. The Debtor has not provided evidence that this recent delinquency has been cured to date, but that the default exists, with the Debtor only able to make the current payment, not cure the arrearage.

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

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

holding that:

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

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

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

44. 12-34546-E-13 KEITH/ZANETTA ROBINSON MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 5-11-15 [[133](#)]

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 May 11, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 11, 2015. Dckt. 133. The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,937.00 delinquent in plan payments, which represents multiple months of the \$5,360.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C.

§ 1307(c)(1).

Keith U. Robinson and Zanetta D. Robinson ("Debtor"), filed a reply to the instant Motion on June 9, 2015. Dckt. 137. Debtor states that they will file, set, serve and be current under an Amended Plan prior to the June 24, 2015 hearing.

However, a review of the docket shows that no such amended plan or Motion to Confirm has been filed to date. Furthermore, the Debtor has not provided any evidence that they have cured the delinquency.

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

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

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

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

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

45.	14-28649-E-13	THOMAS/HEIDI CARTER	MOTION TO DISMISS CASE
	DPC-1	Jeffrey Ogilvie	5-20-15 [54]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.
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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, and the Bankruptcy Case shall proceed in this court.

46. 15-20149-E-13 ANNA PETERSON ORDER TO SHOW CAUSE - FAILURE
Richard Hall TO PAY FEES
4-14-15 [[50](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anna Peterson ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 14, 2014. The court computes that 71 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$75.00 due on April 9, 2015).

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

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

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

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

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

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

47. [15-20149-E-13](#) ANNA PETERSON
DPC-1 Richard Hall

MOTION TO DISMISS CASE
5-5-15 [[62](#)]

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 May 5, 2015. By the court's calculation, 50 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 Debtors 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 and Dismiss the Chapter 13 case.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 5, 2015. Dckt. 62. The Trustee argues that the Debtor did not commence making plan payments and is \$501.00 delinquent in plan payments, which represents multiple months of the \$167.00 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 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 Amended 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 Opposition, filed June 9, 2015, states that Debtor's Motion to Confirm First Amended Chapter 13 Plan was filed May 5, 2015. Dckt. 83. Debtor's opposition also states that under the proposed amended plan, Debtor was to make 4 payments to date of \$167.00 each, totaling \$668.00. Debtor asserts that she has made two cashier's check payments of \$167.00, and a TFS

payment of \$340.00, totaling \$674.00 and bringing her plan payments current.

The Motion to Confirm the Amended Plan is scheduled for hearing on June 16, 2015. Dckt. 58. However, in reviewing the Motion, Debtor states with particularity only the following upon which she believes are grounds to support confirmation:

- A. The bankruptcy case was commenced on January 9, 2015, and David Cusick is the Chapter 13 Trustee.
- B. The First Meeting of Creditors was conducted on March 19, 2015.
- C. The First Amended Chapter 13 Plan was filed on April 14, 2015.
- D. The First Amended Plan proposes to pay creditors with unsecured claims at least as much as they would receive through a Chapter 7 liquidation.
- E. Debtor has made all payments required under the First Amended Plan.
- F. Debtor has Domestic Support Obligations.
- G. Debtor has filed tax returns.
- H. Based on the above, the Debtor requests that the court confirm the First Amended Plan.

Motion, Dckt. 58.

Debtor fails to plead the basic grounds for confirmation which are required under 11 U.S.C. § 1325. Given that the court has uniformly enforced the basic pleading requirements of Federal Rule of Bankruptcy Procedure 9013, Debtor's counsel regularly appears in this court, and attorneys routinely plead all of the requirements of 11 U.S.C. § 1325, the court infers that counsel and Debtor cannot plead (and cannot satisfy) the requirements of 11 U.S.C. § 1325 and comply with the requirements of Federal Rule of Bankruptcy Procedure 9011.

Cause exists to dismiss this Chapter 13 case.

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

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

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

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

48. [15-21449](#)-E-7 BALBIR/SAWARNJIT SEKHON
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-4-15 [[47](#)]

CASE CONVERTED TO CH. 7 ON
5/21/15

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The case having previously been converted to one under Chapter 7, 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 converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

49. [15-21450](#)-E-13 DAVID ALLENDORF
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-2-15 [[22](#)]

DEBTOR DISMISSED: 04/06/2015

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

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

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

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

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

50. [10-25052](#)-E-13 DAVID BEECHER
DPC-1 Robert Huckaby

MOTION TO DISMISS CASE
5-21-15 [[69](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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 and the Bankruptcy Case shall proceed before this court.

51. [14-21252](#)-E-13 EUGENE/LONNA SKIDMORE MOTION TO DISMISS CASE
DPC-1 Timothy Walsh 5-18-15 [[40](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

52. [15-20352-E-13](#) GREGORY/CLARICE BRIDGES MOTION TO DISMISS CASE
DPC-2 Nekesha Batty 5-20-15 [[38](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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 and the Bankruptcy Case shall proceed before this court.

53. [09-48453-E-13](#) STEVEN/DONNA MENSER
DPC-7 Julian Roberts

MOTION TO DISMISS CASE
5-26-15 [[278](#)]

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 May 26, 2015. 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 Debtors 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 Motion to Dismiss is xxxxxx.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 26, 2015. Dckt. 278. The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,174.85 delinquent in plan payments.

Although a Motion to Compel Bank of America, N.A., to Disgorge Funds in the amount of \$18,017.45 was granted, McCarthy & Holthus, LLP, acting on behalf of Select Portfolio Servicing, Inc. (The servicer for the creditor ordered to turnover the monies), determined that returning the funds would not be in the "best interest" of the Debtor. The overpayments made by Debtor had already been applied to Debtor's loan by the previous servicer, Bank of America, N.A. in 2010 and 2011, and returning the funds would result in a \$15,000.00 delinquency. The Trustee states that McCarthy & Holthus did not "believe" the amount was an overpayment and intended to file a motion to vacate the order with the court unless all parties were willing to stipulate to their decision. The Trustee states that the Debtor's counsel has not taken any action.

Steven and Donna Menser ("Debtor") filed an opposition to the instant Motion on June 5, 2015. Dckt. 283. The Debtor states that Debtor Donna Menser informed Trustee that she had sufficient funds to pay the delinquency amount.

Debtor asserts that they have provided their attorney with funds in the amount of \$13,174.85 in order to cover the delinquency in payments, and are only waiting for the Trustee's response. The Debtor also indicates that the "Debtor's attorney has serious medical problems and has been relieved of his case by the civil and Federal courses."

The Trustee filed a response on June 16, 2015. Dckt. 285. The Trustee states he has received a cashier's check to satisfy the default of \$13,174.85. However, the Trustee states that the issue concerning the Order Granting Motion to Compel Bank of America to Disgorge Funds is still outstanding. The Trustee states that he has not received the fund nor has a motion been filed by the creditor to vacate the order.

A review of the Debtor's opposition shows that it has been filed by the "Attorney for Debtors" who is Julian Roberts. The court is confused by the representation that the Debtor's counsel is relieved of his cases. According to the California State Bar website, Mr. Roberts remains an active member with no disciplinary actions pending. FN.1. The court does not see anything that is preventing Mr. Roberts from representing the Debtor. Furthermore, if Mr. Roberts can no longer practice, his paralegal cannot step in as counsel, since she is not a licensed attorney.

FN.1. <http://members.calbar.ca.gov/fal/Member/Detail/178375>

In the Opposition Mr. Roberts (though the signature on the Opposition is unreadable) requests that the court authorize his paralegal to practice law and take over representation of the Debtor in communicating with the Trustee. This court declines the opportunity to override the requirements of the California Supreme Court for the practice of law in California.

The court had granted a Motion to Compel Bank of America, N.A. to Disgorge Funds on July 25, 2014. Dckt. 269. There is no evidence that the Debtor, who filed the motion, have attempted to enforce the order that they sought. Further, there is no showing that the law firm of McCarthy & Holthus, LLP, acting on behalf of Select Portfolio Servicing, Inc. have been empower by the Supreme Court or Congress to vacate orders of this court and grant Bank of America, N.A. from having to comply with orders of this court.

At the hearing, ----

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

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

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

IT IS ORDERED that the Motion to Dismiss is xxxxx

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 22, 2015. Dckt. 24. The Trustee argues that the Debtor did not commence making plan payments and is \$618.00 delinquent in plan payments, which represents multiple months of the \$309.00 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 First Meeting of Creditors, nor the continued Meeting, 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 at 1:30 p.m. on June 25, 2015.

The Trustee also argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, the Trustee'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 May 5, 2015. Dckt. 19. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This

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

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

Therefore, because the Debtor has failed to cure the delinquency, appear at the Meeting of Creditors, provide tax returns to the Trustee, and file a plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

55.	15-21155 -E-13	VINCENT SOMMA AND SARAH HENDRICKSON-SOMMA Jeremy Heebner	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 4-23-15 [22]
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Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Vincent Somma and Sarah Hendrickson-Somma ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 23, 2015. The court computes that 62 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on April 20, 2015).

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

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

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

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

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

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

56. [15-21855](#)-E-13 DEAN/SARILEE MARKS
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-14-15 [[26](#)]

DEBTOR DISMISSED 06/01/2015
JOINT DEBTOR DISMISSED:
06/01/2015

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

57. [15-21855-E-13](#) DEAN/SARILEE MARKS
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-14-15 [[37](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

<p>The case having previously been dismissed, the Order to Show Cause is discharged as moot.</p>

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 is discharged as moot, the case having been dismissed.

58. [15-22155-E-13](#) LORNA ELVE AND JOSEPH
DPC-1 LAMBERT
Pro Se

MOTION TO DISMISS CASE
6-4-15 [[43](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 4, 2015. Dckt. 43. The Trustee argues that the Debtor did not commence making plan payments and is \$200.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the First Meeting of Creditors, nor the continued Meeting, 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 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. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee additionally alleges that the Debtor has failed to provide the Trustee with a Domestic Support Obligation Checklist.

Lastly, the Trustee asserts that the Debtor cannot afford the Plan payments. Schedule J reflects a negative monthly net income of \$793.00, yet the Debtor proposes making a \$100.00 per month Plan payment. See Dckt. 40.

The Debtor has not filed any supplemental papers in response to the instant Motion

Therefore, because the Debtor has failed to cure the delinquency, appear at the Meeting of Creditors, serve the Plan on all interested parties and has yet to file a motion to confirm the Plan, provide the Trustee with a Domestic Support Obligation Checklist, and Debtor's inability to afford the Plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

59. [12-24857-E-13](#) DONALD/JULIANA EMUKPOERUO MOTION TO DISMISS CASE
DPC-2 James Keenan 5-20-15 [[66](#)]

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 66. The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,150.00 delinquent in plan payments, which represents multiple months of the \$3,400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Donald and Juliana Emukpoeruo ("Debtor") filed an opposition on June 10, 2015. Dckt. 70. The Debtor states that Debtor will file a Motion to Confirm Modified Plan in order to cover new expenses from the adoption of a new child and become current on payments. Dckt. 70.

However, 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).

Because Debtor has fallen behind in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

holding that:

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

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

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

60. [13-26157](#)-E-13 JOEL JORDAN MOTION TO DISMISS CASE
DPC-2 Paul Bains 5-19-15 [[63](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

61. [13-33957-E-13](#) MARY AMACKER
DPC-2 Amy Spencer

AMENDED MOTION TO DISMISS CASE
5-26-15 [[66](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 26, 2015. 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.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 26, 2015. Dckt. 59. The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,560.18 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Trustee also notes that he has received information on March 9, 2015 that the Debtor passed away on December 27, 2014. Although there was some indication that there may a motion to substitute party, a review of the docket shows that nothing has been filed.

The Debtor has not filed any supplemental papers in response to the instant Motion.

Because Debtor has fallen behind in plan payments and because there has been no motion to substitute party, 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.

62. 13-33760-E-13 JOAN JOHNSON MOTION TO DISMISS CASE
DPC-2 Andy Warshaw 6-3-15 [56]

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 June 3, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to

64. [15-20361](#)-E-13 HRISTOS ARTSITAS
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-26-15 [[38](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Hristos Artsitas ("Debtor"), Trustee, and other parties in interest on May 26, 2015. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 20, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. [The following filing fees are delinquent and unpaid by Debtor: [\$70.00].

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

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

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

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

65. [15-20361](#)-E-13 HRISTOS ARTSITAS
Jeremy Heebner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-25-15 [[26](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Hristos Artsitas ("Debtor"), Trustee, and other parties in interest on May 26, 2015. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on March 23, 2015).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. [The following filing fees are delinquent and unpaid by Debtor: [\$76.00].

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

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

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

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

66. [15-20361-E-13](#) HRISTOS ARTSITAS
DPC-2 Jeremy Heebner

MOTION TO DISMISS CASE
5-5-15 [[33](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 5, 2015. Dckt. 33. 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 24, 2015. Dckt. 27. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Furthermore, the Trustee asserts that Debtor has failed to provide proof of his Social Security Numbers to establish Debtor's identity pursuant to the request of the United States Trustee and Chapter 13 Trustee. See 11 U.S.C. §521(h)(2).

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

Therefore, for the Debtor's failure to file a plan and to provide proof of his Social Security Numbers, 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.

67. [15-21261-E-13](#) RICHARD BRANTLEY MOTION TO DISMISS CASE
DPC-3 Pro Se 5-22-15 [[33](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor *Pro Se*, and Office of the United States Trustee on May 22, 2015. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 22, 2015. Dckt. 33. The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,590.00 delinquent in plan payments, which represents multiple months of the \$1,795.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 5, 2015. Dckt. 25. 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).

Because Debtor has fallen behind in plan payments and has not filed a new motion to confirm plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

68. [14-28862-E-13](#) DAVID/TOMASA OWENS MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 5-20-15 [57]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 57. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,850.00 delinquent in plan payments, which represents multiple months of the \$925.00 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 further argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 10, 2015. Dckt. 54. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

Therefore, for Debtor's delinquency and failure to file a Plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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 May 22, 2015. 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 grant the Motion to Dismiss and dismiss the case.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 22, 2015. Dckt.48. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 13, 2015.

Charles and Claudia Burnett ("Debtor") filed an opposition on June 10, 2015. Dckt. 52. The Debtor states that Debtor will file a Motion to Confirm Modified Plan on or before this hearing.

However, 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).

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

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

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

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

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

70. [15-23662-E-13](#) JUAN FLORES
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-8-15 [[28](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Juan Flores ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on June 8, 2015. The court computes that 16 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on June 3, 2015).

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

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

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

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

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

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

71. [10-45765-E-13](#) GREGORY/LYNN MURDOCK
DPC-2 James Keenan

MOTION TO DISMISS CASE
5-19-15 [[74](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 19, 2015. Dckt. 74. The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,600.00 delinquent in plan payments, which represents multiple months of the \$2,800.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Gregory and Lynn Murdock ("Debtor") filed an opposition to the instant Motion on June 10, 2015. The Debtor states that Debtor will file a Motion to Confirm Modified Plan in order to account for a recent income loss and become current on payments. Dckt. 78.

On June 19, 2015, Debtor filed a Second Modified Plan (Dckt. 83) and Motion to Confirm (Dckt. 80) which is set for hearing on August 11, 2015. The Chapter 13 Plan appears to state with particularity the grounds for confirmation. Debtor's declaration appears to provide personal knowledge testimony in support of confirmation. Fed. R. Evid. 601, 602.

In light of Debtor in prosecuting a motion with supporting evidence, the court denies without prejudice the Motion.

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

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

The 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.

72. [11-35166-E-13](#) DAVID/JANIS ROBINSON MOTION TO DISMISS CASE
DPC-1 Michele Garfinkel 5-11-15 [[117](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 11, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 11, 2015. Dckt. 117. The Trustee seeks dismissal of the case on the basis that the Debtor is \$13,165.03.00 delinquent in plan payments, which represents multiple months of the \$3,969.210 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

and good cause appearing,

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

73. [14-31766-E-13](#) ROBERTO RAMIREZ MOTION TO DISMISS CASE
DPC-3 Pro Se 4-9-15 [[38](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor *Pro Se*, and Office of the United States Trustee on April 9, 2015. By the court's calculation, 76 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on April 9, 2015. Dckt. 38. The Trustee seeks dismissal of the case on the basis that the Debtor is \$300.00 delinquent in plan payments, which represents multiple months of the \$150.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore, the Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 24, 2015. Dckt. 35. 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).

Because Debtor has fallen behind in plan payments and has not filed a new motion to confirm plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

74. [09-26667](#)-E-13 JOSE/ROBIN GONZALEZ
DPC-1 Jeremy Heebner

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
5-12-15 [[91](#)]

No Tentative Ruling: The Motion to Convert the Bankruptcy Case 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 - Hearing Required.

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, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case 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 defaults of the non-responding parties and other parties in interest are entered.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is continued to 3:00 p.m. on January 15, 2016.

This Motion to Dismiss the Chapter 13 bankruptcy case of Jose and Robin Gonzalez ("Debtor") has been filed by David Cusick, the Chapter 13 Trustee.

The Trustee states that the plan was completed on May 9, 2014 and the order approving the Trustee's Final Report was filed on July 9, 2014. The discharge of the Debtor was filed on July 29, 2014. The sexual harassment complaint was filed on July 9, 2013. The order reopening the case was filed on August 28, 2014.

The Debtor's Schedules B and C were amended on August 28, 2014 to include the contingent and unliquidated claims regarding the sexual harassment and workers compensation with the values listed as "unknown" and exempting \$3,000.00 for the harassment case and \$2,680.00 for the workers compensation claim.

The Trustee states that he is unable to find information in the Yuba County Court regarding the workers compensation case. Case no. YBCT-550301.

As to the sexual harassment case, the Trustee discovered that the trial is set to begin on August 24, 2015. District Court for the Eastern District of California, Case No. 2:13-CV-01368. However, the Trustee notes that it has been requested by the parties for the trial to be continued to September 28, 2015 and for discovery to be continued as well. The Trustee states that, based on the case, it is not apparent what, if any, award the Debtor would receive.

The Trustee argues that since the Final Report has been approved and the discharge of the Debtor entered, the Trustee does not know of what purpose to be served to administer the underlying reopened Chapter 13 case. The Trustee argues that the case should be converted to a Chapter 7, where a Chapter 7 Trustee would be better able to step into the Debtor's position and realized an award which could then be distributed to creditors.

DEBTOR'S RESPONSE

The Debtor filed a response to the instant Motion on May 18, 2015. Dckt. 96. The Debtor states that they reopened the Chapter 13 case in order to list additional assets, namely the two pending state and federal cases. The Debtor argues that the Trustee has offered no authority that a Chapter 7 liquidation would be proper merely because the Chapter 7 Trustee may be better at distributing any funds that may be received. The Debtor states that there is a distinct possibility that Debtor Robin Gonzalez may not win anything in the lawsuits, leaving nothing to be done. If Debtor Robin Gonzalez does prevail, she may have to pay additional money to the Chapter 13 Trustee. The Debtor states that instead of converting, closing the case until such assets become available, if any, would be a possible solution.

The Debtor filed a supplemental response on May 26, 2015. Dckt. 98. The Debtor states that after speaking with the trial attorney, the Debtor do not wish for their case to be closed, but instead want the case to remain open as a Chapter 13. The Debtor also notes that the Trustee was unable to find any information concerning the workers compensation case because it was filed in Yolo County and not Yuba County.

RULING

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

The Bankruptcy Code Provides:

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

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

DISCUSSION

Debtor filed this bankruptcy case on April 9, 2009. In 2013, while this Chapter 13 case was pending, Debtor commenced an action asserting claims for sexual harassment. Debtor never disclosed the existence of this claim, or a worker's compensation claim during the pendency of this case. Debtor's confirmed Chapter 13 Plan required monthly plan payments of only \$538.50. Plan, Dckt. 21. Debtors provided for at least a 51% dividend to creditors holding general unsecured claims.

In reviewing the District Court file, this court notes that the reopening of this case and the disclosure of these claims occurred only after the Defendant in the District Court Action asserted that Debtor was prohibited by judicial estoppel from prosecuting the claims because Debtor failed to Schedule them in this bankruptcy case. E.D. Cal. 13-01368, Dckt. 37; December 29, 2014 Renewed Motion for Summary Judgment based on Judicial Estoppel. The Motion for Summary Judgment based on Judicial Estoppel was originally filed on August 13, 2014. *Id.*, Dckt. 19.

In the District Court Action Debtor filed a response to the August 13, 2014 Motion for Summary Judgment asserting that amended schedules had been filed in this bankruptcy case disclosing this asset. *Id.*, Dckt. 21; filed by Johnny L. Griffin III, attorney for Debtor. On August 28, 2014, Debtor filed the Amended Schedule B disclosing this asset. Dckt. 89. This Amended Schedule B was served on the Chapter 13 Trustee and the U.S. Trustee. Cert. of Service, Dckt. 90. That is after the plan had been completed and the Debtor's discharge entered.

The Complaint in the District Court Action was filed on July 9, 2013. The conduct upon which the claims are based occurred prior to and during this bankruptcy case. Such claims are property of the bankruptcy estate, to be prosecuted by the representative of this bankruptcy estate. In a Chapter 13 case that is the Chapter 13 Debtor.

The court having reopened this case, the chapter 13 debtors, Jose Hernandez Gonzalez and Robin Michelle Gonzalez, are the proper parties to assert the rights in the District Court Action.

However, since the assets were never disclosed, they have remained in the bankruptcy estate notwithstanding confirmation of the plan, completion of the plan, and Debtor obtaining a discharge.

At this juncture, conversion of the case to one under Chapter 7, and requiring a new party in interest to be substituted into the District Court Action (a chapter 7 trustee) and disrupt that Action which is ready for trial.

To address the fact that this asset has remained in the bankruptcy estate, the court does not convert the case at this time. Debtor can continue, as the representative of the bankruptcy estate, to prosecute the claims in the District Court Action. However, the court will order that all monies recovered shall be paid to the Clerk of the Bankruptcy court pending further order of the court. Additionally, if any attorneys for Debtor in prosecuting the District Court Action intend to be paid any legal fees or reimbursed for expenses they shall obtain an order authorizing Debtor to employ them and also obtain authorization for payment of legal fees and expenses as permitted pursuant to 11 U.S.C. §§ 330 and 331.

The court continues the hearing on the Motion to Convert to 3:00 p.m. on January 15, 2016.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not 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 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 Motion to Dismiss is continued to 3:00 p.m. on January 15, 2016.

IT IS FURTHER ORDERED that Jose Hernandez Gonzalez and Robin Michelle Gonzalez, the Chapter 13 Debtors in this case, shall continue in the prosecution of the claims in the District Court Action pending before the United States District Court for the Eastern District of California, case no. 13-cv-01368, and the claims described as

Sexual Harassment Claim, Case Number:
2:13-CV-01368-KJM-AC, and

Workers' Compensation Claim, Case Number: YCBT-550301

on Amended Schedule B filed in this bankruptcy case.

IT IS FURTHER ORDERED that all monies recovered for or relating to the above described claims shall be paid to the Clerk of the Court, for the United States Bankruptcy Court for the Eastern District of California pending further order of this court how such monies are to be disbursed.

IT IS FURTHER ORDERED that Johnny L. Griffin III, any other attorneys or professionals who seek to be compensated for legal services provided or reimbursed for expenses relating to such legal services provide to Jose Hernandez Gonzalez and Robin Michelle Gonzalez, as Debtors, in prosecuting the above describes claims which are property of the bankruptcy estate shall have the Debtors obtain authorization pursuant to 11 U.S.C. § 327 and obtain the allowance of any such professional fees and expenses pursuant to 11 U.S.C. §§ 330 and 332. denied without prejudice.

75. [10-40469-E-13](#) BRETT ROBINSON MOTION TO DISMISS CASE
DPC-1 Marc Caraska 5-21-15 [[106](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 21, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 21, 2015. Dckt. 38. The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,242.60 delinquent in plan payments, which represents multiple months of the \$604.12 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in response to the instant Motion.

Because Debtor is delinquent, cause exists to dismiss this case. The

motion is granted and the case is dismissed.

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

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

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

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

76. [13-29769-E-13](#) JOHN JAMES
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
6-4-15 [[124](#)]

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 June , 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 4, 2015. Dckt. 124. The Trustee argues that the Debtor has failed to comply with the terms of the Order, confirmed on January 30, 2015. Dckt. 123. The Debtor has not provided the Trustee with Profit and Loss statements, and 90 days of bank statements. Also, the Trustee argues that the Debtor did not provide a complete copy of State and Federal income tax returns. This is a material default by the Debtor with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6).

The Debtor has not filed any supplemental papers in connection with the instant Motion.

Therefore, for the Debtor's failure to comply with the terms of the Order, resulting in a failure to provide the Trustee with profit and loss statements, 90 days of bank statements, and a complete copy of State and Federal income tax returns, 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.

77. [13-35369-E-13](#) VASILIOS TSIGARIS MOTION TO DISMISS CASE
DPC-2 Marc Caraska 5-11-15 [[100](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 11, 2015. By the court's calculation, 44 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on

May 11, 2015. Dckt. 100. The Trustee seeks dismissal of the case on the basis that the Debtor is \$9,772.64 delinquent in plan payments, which represents multiple months of the \$2,443.16 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in connection with the instant Motion.

Because Debtor is delinquent in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

78. [14-25069-E-13](#) KENNETH/RENETTE JOHNSON MOTION TO DISMISS CASE
DPC-4 Richard Jare 6-2-15 [[61](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on June 2, 2015. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 2, 2015. Dckt. 61. The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,800.00 delinquent in plan payments, which represents multiple months of the \$2,400.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in connection with the instant Motion.

Therefore, because the Debtor is delinquent in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

79. [14-31269-E-13](#) ALLEN VOGEL MOTION TO DISMISS CASE
DPC-3 Scott Johnson 5-20-15 [[32](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 32. The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,858.40 delinquent in plan payments, which represents multiple months of the \$1,395.00 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 January 27, 2015. Dckt. 27. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee's Motion also asserts that Debtor is not prosecuting the case. On February 18, 2015, Trustee's prior Motion to Dismiss was denied after Debtor's counsel represented that the Modified Plan had been sent to Debtor, and that a motion to confirm would be filed shortly thereafter. Dckt. 29. 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).

Because Debtor has failed to file a new motion to confirm a plan, is delinquent under the plan, and has failed to prosecute the instant case, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

80. [15-21869-E-13](#) ELIAS OLGUIN
DPC-2 Stephen Murphy

MOTION TO DISMISS CASE
6-5-15 [[45](#)]

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 June 5, 2015. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on June 5, 2015. Dckt. 45. 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 June 2, 2015. Dckt. 42. 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).

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

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

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

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

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

81. [14-27870-E-13](#) LATANYA MOORE MOTION TO DISMISS CASE
DPC-3 Scott Johnson 5-19-15 [[45](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 May 21, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed this instant Motion to Dismiss on May 21, 2015. Dckt. 115. The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,330.00 delinquent in plan payments, which represents multiple months of the \$2,665.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion also argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 24, 2015. Dckt. 107. 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).

Cherrone Peterson ("Debtor"), filed a reply to the instant Motion on June 8, 2015. Dckt. 119. Debtor replies stating Debtor will be current under the terms of the proposed Chapter 13 Plan. Debtor additionally asserts that she will file, set and serve an Amended Plan prior to the hearing on this matter.

On June 18, 2015, Debtor filed a Third Amended Chapter 13 Plan, Dckt. 125; Motion to Confirm, Dckt. 121, set for hearing on August 11, 2015; and a Declaration in support of confirmation, Dckt. 123. While the Declaration appears to provide personal knowledge testimony (F.R.E. 601, 602), the Motion may well not state with particularity the grounds for the relief requested (Fed. R. Bank. P. 9013). It appears that Debtor's pleading merely states the "[p]roposed plan complies with 11 U.S.C. § 1325(a), § 1329(a), § 1322(b), § 1322(c) and all other applicable provisions of the code." Motion ¶ 6, Dckt. 121. FN.1.

FN.1. No explanation is provided as to how the Debtor is citing as grounds to confirm a plan in this case the statutory provisions relating to modifying an already confirmed plan - 11 U.S.C. § 1329.

The pleading in the motion is the equivalent of a creditor stating grounds for relief from the automatic stay as, "creditor is entitled to relief to the automatic stay pursuant to 11 U.S.C. § § 362(d)(1), (d)(2)(A), (d)(4), and other applicable provisions of any other code."

Debtor fails to state that (1) Debtor will be able to make the payments under the plan, (2) that Debtor filed the bankruptcy case in good faith, (3) that all domestic support obligations have been paid or none are owed, and (4) all tax returns have been filed. While the court could presume that the failure to state as grounds the basic requirements for confirmation, it is equally plausible that Debtor and counsel knows that such grounds cannot be alleged and they do not want to violate their duties under Federal Rule of Bankruptcy Procedure 9011.

Therefore, for the Debtor's delinquency and failure to file a motion to confirm this third attempt at a Chapter 13 plan which meets the minimum pleading requirements for a motion, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

83. [14-30070-E-13](#) LEAH CHERRY MOTION TO DISMISS CASE
DPC-2 Jeremy Heebner 6-5-15 [[77](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

**The Motion to Dismiss the Bankruptcy Case is dismissed
without prejudice.**

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

84. [14-29671-E-13](#) DANNY RUE
DPC-3 Pro Se

MOTION TO DISMISS CASE
5-27-15 [[134](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*), and Office of the United States Trustee on May 27, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 27, 2015. Dckt. 134. The Trustee seeks dismissal of the case on the basis that the Debtor is \$472.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion further 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 April 21, 2015. Dckt. 133. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee alleges that Deutsche Bank National Trust Company, a Creditor, was granted relief from automatic stay on March 3, 2015. Dckt. 108.

Further, the Trustee alleges that the Debtor has filed ten bankruptcy cases since 2008. Taking these repeated and unsuccessful filing coupled with the Debtor's inability to get a plan confirmed, the Trustee argues that the Debtor will be unable to confirm a plan in the instant case. It appears that since Deutsche Bank National Trust Company received relief from the stay and the Debtor not presenting a viable and feasible plan, the Debtor will not be able to get a plan confirmed.

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

Therefore, for the Debtor's delinquency, failure to file a new Plan, and previous bankruptcy filing history, 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.

85. [11-20572-E-13](#) JOHANNES GIORGISE MOTION TO DISMISS CASE
DPC-5 Mark Wolff 5-20-15 [[251](#)]

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 251. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,171.82 delinquent in plan payments, which represents multiple months of the \$585.91 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Yohannes Giorgise ("Debtor") filed an opposition to the instant Motion on June 10, 2015. Dckt. 255. The Debtor states that she will be current in payments on or before the hearing date of June 24, 2015, but offers no further explanation.

Unfortunately, the Debtor has not provided any evidence showing that the delinquency has been cured.

Because Debtor has fallen behind in plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

86. [13-30273-E-13](#) ELIAS ORTIZ
DPC-4 Scott Johnson
WITHDRAWN BY M. P.

MOTION TO DISMISS CASE
5-19-15 [[95](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

<p>The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.</p>

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, 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 Motion to Dismiss is granted and the case is dismissed.

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 4, 2015. Dckt. 32. The Trustee argues that the Debtors did not commence making plan payments and is \$1,534.30 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Moreover, Debtors have not provided the Trustee with bank statements for the preceding 6 months, or with profit and loss statements for their business, Louis AC Salvage. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtors have not filed any supplemental papers in connection with the instant Motion.

Because Debtors have failed to commence plan payments, and provide the Trustee with Bank statements and profits and loss statements, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

Tentative Ruling: The Motion to Dismiss 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 May 21, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 21, 2015. Dckt. 49. The Trustee argues that the Debtor will complete the Plan in 66 months, as opposed to the 60 months proposed. The Debtor states that this is due to the Debtor understating the value of the Class 5 claim of State Board of Equalization. This exceeds the maximum amount of time allowed for a plan under 11 U.S.C. §1322(d). Failure to complete Plan within the maximum amount allowed is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Eric T. Welch and Susan D. Welch ("Debtor"), filed a reply to the instant Motion on June 9, 2015. Dckt. 53. Debtor replies as follows:

1. Debtor filed for Chapter 13 Bankruptcy on November 4, 2010. On their filed Schedule E and in section 3.17 of their plan, the Debtors listed a debt owed to the State Board of Equalization in the total amount of \$15,000.00. However, according to the terms of the offer and compromise, the Debtor's were required to pay the full amount within 30 days of the signing agreement.

See Exhibit A, Dckt. 55. The Debtors were prevented from making a preferential payment to the State Board of Equalization because of the automatic stay that was created when they initiated bankruptcy.

2. The State Board of Equalization refused to accept the \$15,000.00 that would be paid through the Debtor's Plan and on February 7, 2011, they revoked the offer and compromise by filing a Proof of Claim in the amount of \$48,788.40, of which \$37,050.83 is interest on the actual amount of past due taxes. See Exhibit B, Dckt. 55. The State Board of Equalization also terminated any further settlement negotiations with the Debtors.
3. The Debtors will file a motion to modify their plan to cure their delinquency.

Unfortunately, a review of the docket shows that the Debtor has failed to file a proposed modified plan or Motion to Confirm.

Therefore, for the Debtor's failure to file a Plan to correct the claim amount for State Board of Equalization and to ensure the plan completes within the statutory maximum of 60 months, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

89. [14-28078-E-13](#) GUADALUPE GONZALEZ
DPC-3 Julius Engel

MOTION TO DISMISS CASE
5-22-15 [[67](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 22, 2015. Dckt. 67. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the withdrawal of Debtor's prior Motions to Confirm Plan on February 27, 2015 and March 24, 2015. Dckt. 48, 64. 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).

A review of the docket shows that there is no pending Motion to Confirm nor has the Debtor filed a response to the instant Motion.

Because Debtor has failed to file a new motion to confirm a plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

cause appearing,

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

90. [15-21779-E-13](#) HARRY ANDREWS MOTION TO DISMISS CASE
DPC-2 Mohammad Mokarram 5-20-15 [[28](#)]

Final Ruling: No appearance at the June 25, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 28. 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).

Furthermore, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Lastly, the Trustee argues that the Debtor did not commence making plan payments and is \$525.00 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

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

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

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

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

91. [11-27780-E-13](#) RANDALL/KIMBERLEY BEFORT MOTION TO DISMISS CASE
DPC-8 Brandon Scott Johnson 5-20-15 [[58](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. 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 granted the Motion to Dismiss and dismiss the case.

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 22, 2015. Dckt. 19. The Trustee argues that the Debtor did not commence making plan payments and is \$1,800.00 delinquent in plan payments, which represents multiple months of the \$1,800.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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).

DEBTOR'S REPLY

James E. Nolen, 3RD, ("Debtor"), filed a reply to the instant Motion on June 10, 2015. Dckt. 26. Debtor argues that he did not receive the notice of Meeting of Creditors, and therefore missed the meeting on April 30, 2015. However, Debtor's counsel was present and the Meeting was continued and scheduled for June 25, 2015.

Debtor further alleges that he erroneously believed his plan payments did not commence until after he met with the Trustee, and his plan was approved by the court. Debtor states that he is making the May payment and will be making the June payment prior to the hearing. The Debtor requests that the court continue the instant Motion to the same day as the Motion to Confirm.

Unfortunately, a review of the docket shows that Debtor has not filed an amended plan nor a Motion to Confirm. Furthermore, the Debtor does not provide any evidence that he has, in fact, made the May or June payment.

Additionally, Debtors contention that (1) he did not know about the First Meeting of Creditors and (2) did not know that he had to start plan payments is not consistent with being represented by an experienced bankruptcy attorney. At \$1,800.00 a month the Debtor should have set aside \$5,400.00 in projected disposable income with which to fund the plan for the months of April, May, and June 2015.

Finally, Debtor offers no evidence in opposition, but merely argument by his attorney of "facts" for which the court has no evidence.

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

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

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

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

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

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 June 1, 2015. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on June 1, 2015. Dckt. 31. The Trustee argues that the Debtor did not commence making plan payments and is \$3,649.23 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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).

Moreover, Debtor has not provided the Trustee with employer payment

advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in response to the instant Motion.

Because Debtor has failed to commence plan payments, attend the 341 meeting, and provide the Trustee with payment advices and tax returns, 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.

94. [15-22783](#)-E-13 CRISTOFER ALARCON ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
5-11-15 [[28](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Cristofer Alarcon ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on May 11, 2015. The court computes that 44 days' notice has been provided.

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

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

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

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

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

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

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

95. [15-22783-E-13](#) CRISTOFER ALARCON MOTION TO DISMISS CASE
DPC-1 Pro Se 6-1-15 [[31](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

96. [11-22884-E-13](#) WENDEL/MARY APPERT
DPC-2 W. Steven Shumway

MOTION TO DISMISS CASE
5-20-15 [[77](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 77. The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,547.06 delinquent in plan payments, which represents multiple months of the \$698.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Wendel N. Appert and Mary D. Appert ("Debtor"), filed a reply to the instant Motion on June 10, 2015. Dckt. 81. Debtor state that they forgot that their original Plan contained a provision which increased the monthly payments at some point during the life of the Plan. When the provision was discovered, Debtor was delinquent. Debtor has increased their payments into the Plan, effective with the February 2015 payment. Debtor filed, in concurrence with this reply, a Motion to Confirm and a proposed Modified Plan. The Modified Plan seeks to cure the delinquency in their Plan, and will provide a larger return to unsecured creditors than the original Plan provided.

The Motion to Confirm the Plan, Dckt. 83, appears to comply with Federal Rule of Bankruptcy Procedure 9013; and the Declaration, Dckt. 85, appears to provide person knowledge testimony (Fed. R. Evid. 601, 602).

Debtor appearing to be actively prosecuting the case, 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.

97. [11-35484-E-13](#) WILLIAM/DIANE CATLETT MOTION TO DISMISS CASE
DPC-1 Peter Macaluso 5-20-15 [[48](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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.

98. [14-32084-E-13](#) STEVEN/SHARON COLLINS MOTION TO DISMISS CASE
DPC-2 Brian Turner 5-5-15 [[30](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 5, 2015. By the court's calculation, 50 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 5, 2015. Dckt. 30. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 24, 2015. Dckt. 26. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Furthermore, the Trustee seeks dismissal of the case on the basis that the Debtor is \$5,618.29 delinquent in plan payments, which represents multiple months of the \$3,559.43 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Steven R. Collins and Sharon L. Collins ("Debtor"), filed a reply to the instant Motion on June 10, 2015. Dckt. 39. Debtor argues that, due to an error in filing their tax returns, Debtor was advised to file amended returns. While attempting to file the amended returns, the Internal Revenue Service initiated a tax audit. Debtor states that they were advised not to file their Amended Chapter 13 Plan until the completion of the audit. However, the audit is taking longer than expected, and therefore the Debtors are filing an Amended Chapter 13 Plan to address the concerns of the Trustee.

The Debtors filed a Motion to Confirm on June 10, 2015. Dckt. 34. The proposed Plan may address how to cure the delinquency. Therefore due to the interconnectedness of the instant Motion to Dismiss and the Motion to Confirm, the court continues the hearing to 3:00 p.m. on July 28, 2015.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckts. 34, 36. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

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

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

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

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

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

99. [14-32085](#)-E-13 PATRICIA MELMS MOTION TO DISMISS CASE
DPC-2 Jeremy Heebner 4-21-15 [[53](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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.

100. [11-27286-E-13](#) SHIRL JIBOK MOTION TO DISMISS CASE
DPC-2 Peter Macaluso 5-19-15 [[103](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

The Chapter 13 Trustee having filed a Notice of Withdrawal on June 19, 2015, Dckt. 116, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 116, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

101. [12-30588](#)-E-13 DIANE/OSVALDO MALDONADO MOTION TO DISMISS CASE
DPC-3 Matthew Eason 5-19-15 [[144](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

**The Motion to Dismiss the Bankruptcy Case is dismissed
without prejudice.**

The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 153, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 153, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

102. [14-30389](#)-E-13 MELISSA JONES
DPC-4 Peter Macaluso

MOTION TO DISMISS CASE
6-4-15 [[69](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

The Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

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.

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.

104.	15-22991 -E-13	PARISH HARRIGAN AND AMY DPC-1 BAKER	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 5-21-15 [16]
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No Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on May 21, 2015. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Objection to the Plan is xxxxxxx

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtors Plan may not be the Debtors best efforts under 11 U.S.C. § 1325(b). Debtors are below median income. At the Meeting of Creditors, Debtors admitted that Parish Harrigan is now employed. He had previously reported, in Schedule I, that he was unemployed. Debtors have failed to file supplemental Schedules I and J to reflect their current income and expenses.

Debtors received an IRS refund for the overpayment of taxes, in the amount of \$4,533.00. Debtors could use this additional disposable income to pay unsecured creditors each year, whereas the proposed plan seeks to pay unsecured creditors \$0.00. Additionally, a tax refund of \$4533.00 could be used to supplement income, and thus garner an additional \$377.75 per month to be paid into the plan. The Trustee requests that Debtors turn over future tax refunds to pay into the plan as an additional payment each year.

JUNE 16, 2015 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on June 24, 2015 to be heard in conjunction with the Trustee's Motion to Dismiss.

DISCUSSION

At the hearing, -----

The Trustee's objections are well-taken. The court notes that on May 22, 2015, the Debtors filed Supplemental Schedules I and J, reflecting that the Debtor has recently gained employment at Market Source. Dckt. 20. However, the Debtors do not list any income or expenses arising from the employment, for what appears to be due to the fact the Debtor has only had the job for two weeks.

Unfortunately, the Trustee's objections remain unresolved since the Supplemental Schedules do not provide information as to the wages earned by the Debtor in the new position. Without this information, the court cannot determine if the plan is in their best efforts since the plan is premised on the Debtor not having employment. It is possible that the Debtors may become an over-median debtors which would require additional plan changes. This is further exasperated by the Debtors failing to provide for the Internal Revenue Service reimbursement. It appears to the court that, while the Debtors did file Supplemental Schedules, they do not provide for updated financial information. As such, it appears that the plan is not the Debtors' best efforts. 11 U.S.C. § 1325(b).

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 Objection to the Chapter 13 Plan filed by the

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 Objection to confirmation the Plan is
xxxxxx

105. [10-44993-E-13](#) SHARI LANNING MOTION TO DISMISS CASE
DPC-6 Peter Macaluso 5-19-15 [[51](#)]

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 May 19, 2015. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 19, 2015. Dckt. 51. The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,047.00 delinquent in plan payments, which represents multiple months of the \$262.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Shari L. Lanning ("Debtor"), filed a reply to the instant Motion on June 8, 2015. Dckt. 55. Debtor's counsel states that Debtor lives out of state and Debtor's counsel is still attempting to contact her, in an effort to cure

the payments and/or amend the Plan. Debtor is in the 56th month of the Plan and Debtor's counsel requests additional time to remedy the Trustee's concerns.

Unfortunately, the Debtor has not provided any evidence that the delinquency has been cured and there is no pending Motion to Confirm. While the court understands that Debtor's counsel cannot get in touch with his client, the Debtor and Debtor's counsel have been on notice of the instant Motion for over a month. Without any evidence other than the Debtor's counsel stating that he is "still attempting to make contact with her," cause exists to dismiss.

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

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

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

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

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

106. [13-24993-E-13](#) DENNIS/SANDRA CUVA
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE
5-21-15 [[115](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

**The Motion to Dismiss the Bankruptcy Case is dismissed
without prejudice.**

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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 May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David P. Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on May 20, 2015. Dckt. 34. The Trustee argues that the Debtor did not commence making plan payments and is \$3,450.00 delinquent in plan payments, which represents multiple months of the \$1,725.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Furthermore, 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 April 28, 2015. Dckt. 28. 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).

Gary M. Bitters ("Debtor"), filed a reply to the instant Motion on June 10, 2015. Dckt. 38. Debtor replies as follows:

1. Debtor concedes that he is delinquent under the present Chapter 13 Plan. At the time of filing, Debtor was unemployed and not receiving any financial assistance. See Dckt. 1. As of April 1, 2015, Debtor obtained employment at Kaiser Permanente in Sacramento, California. On June 2, 2015, the Chapter 13 Trustee posted a payment of \$1,800.00 on the 13Network website. Debtor believes that he will be able to make ongoing payments to the Chapter 13 under an Amended Chapter 13 Plan.
2. Given that Debtor now has stable income, Debtor and counsel have drafted a First Amended Chapter 13 Plan and Motion to Confirm. Debtor states that by the date of the June 24, 2015 hearing, he will have filed, served, and set for a hearing his First Amended Chapter 13 Plan, Motion to Confirm, and amended budget.

Unfortunately, a review of the docket shows that no such proposed amended plan nor Motion to Confirm has been filed by the Debtor.

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

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

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

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

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

108. [14-31394-E-13](#) JOSEPH IRVIN
DPC-2 Timothy Walsh

MOTION TO DISMISS CASE
5-22-15 [[26](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 22, 2015. 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 22, 2015. Dckt. 26. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 10, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Because Debtor has failed to file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted and

the case is dismissed.

109. [10-53596](#)-E-13 GREGORY HUTSON MOTION TO DISMISS CASE
DPC-1 Justin Kuney 5-19-15 [[67](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

**The Motion to Dismiss the Bankruptcy Case is dismissed
without prejudice.**

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on June 18, 2015, Dckt. 75, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 75, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

110. [11-23098-E-13](#) NORBERTO/MONICA BALINADO MOTION TO DISMISS CASE
DPC-3 Nekesha Batty 5-20-15 [[118](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 20, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed this Motion to Dismiss on May 20, 2015. Dckt. 118. The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,000.60 delinquent in plan payments, which represents multiple months of the \$2,021.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any supplemental papers in connection with the instant Motion.

Because Debtor remains delinquent, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

111. [11-24598-E-13](#) MATTHEW/LESLIE GALE
DPC-1 Joseph Canning

MOTION TO DISMISS CASE
5-20-15 [[58](#)]

Final Ruling: No appearance at the June 24, 2015 hearing is required.

**The Motion to Dismiss the Bankruptcy Case is dismissed
without prejudice.**

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.

112. [14-28099-E-13](#) YASWANT/KAMINI SINGH
DPC-4 Len ReidReynoso

STATUS CONFERENCE RE: MOTION TO
DISMISS CASE
3-17-15 [[70](#)]

Debtors' Atty: Len ReidReynoso

The Court's decision is to dismiss the Chapter 13 Bankruptcy Case and impose a three-year bar on the Debtors, and each of them, from filing any bankruptcy cases.

Notice Provided: Set by special order filed 5/1/15 [Dckt 76] Debtors and Debtors' attorney to appear in person. Responses addressing issues and matters to be considered to be filed and served by 6/1/15; replies, if any, filed and served by 6/15/15.

REVIEW OF CASE AND MULTIPLE BANKRUPTCY FILINGS BY DEBTORS

The current Chapter 13 case was commenced by Yaswant and Kamini Singh ("Debtor") on August 8, 2014. Debtor's Amended Chapter 13 Plan was confirmed by order filed on February 18, 2015. Order, Dckt. 68. By order filed on October 21, 2014, the court granted relief from the automatic stay to allow Rudolph and Evelyn Satterfield to conduct a non-judicial foreclosure sale and obtain possession of real property commonly known as 13711 Cherokee Lane, Galt, California. Order, Dckt. 39. As set forth in the court's detailed findings of fact and conclusions of law for the Satterfield motion for relief from the automatic stay,

Additionally, 11 U.S.C. § 362(d)(4) allows the court to grant relief from stay where the court finds that the petition was filed as part of a scheme to delay, hinder or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property.

This is now the Debtors' six[th] bankruptcy case since March 9, 2011. Debtor has not been able to prosecute successfully the prior five cases. Debtor has failed, or refuses, to make the payments on the Plan proposed in this case. The Debtors have daisy-chained their bankruptcy protection for three years, without effectively prosecuting their cases, as follows:

	Case 11-25814	Case 11-35690	Case 11-40337	Case 12-26563	Case 14-26529	Current Case
Filed	March 9, 2011					
Dismissed	June 16, 2011					

Filed		June 24, 2011				
Filed			August 22, 2011			
Dismissed		August 23, 2011				
Converted to Chapter 7			January 10, 2012			
Filed				April 3, 2012		
Chapter 7 Discharge			July 10, 2012			
Dismissed				November 23, 2013		
Filed					June 23, 2014	
Dismissed					July 11, 2014	
Filed						August 8, 2014

The Debtors have not, and are not prosecuting these Chapter 13 cases in a good faith effort to rehabilitate their finances. Rather, they have linked them, as well as the Chapter 7 case they converted to, to hinder and delay the Movant.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 364(d)(4). Movant has provided sufficient evidence concerning a series of bankruptcy cases being filed with respect to the subject Property. The court finds that the filing of the present petition works as part of a scheme to delay, hinder, or defraud Movant with respect to the Property by the filing of multiple bankruptcy cases.

Civil Minutes, Dckt. 37.

The confirmed Chapter 13 Plan provides for Class 3, surrender treatment for the property securing the Satterfield claim.

Though the Debtors have defaulted in the current plan, which is pyramided on the prior defaults and dismissals, the court has no idea of whether this is a "strategic default" so as to allow Debtor to file yet another bankruptcy case. In December 2014, each of the Debtors

testified under penalty of perjury that they were proposing a plan to provide a 100% dividend to creditors. Declaration, Dckt. 59. As of the confirmation hearing Debtor was current in all plan payments and sought confirmation with the representation that the plan was feasible and Debtor, in good faith, proposed and would perform the plan. Motion, Dckt. 57; Declaration, Dckt. 59; Civil Minutes, Dckt. 65.

The Order confirming the Plan was not one moth on the Docket when the Trustee filed a Notice of Default for Debtor failing to make the Plan payments. Dckts. 69, 79 (the notice having been filed twice). Debtor immediately defaulted with the payment that was due at the end of February 2015 (due seven days after the confirmation order was filed).

Debtor having demonstrated the propensity to file bankruptcy cases not in good faith, the court having granted relief from the automatic stay based on Debtor's bad faith conduct, Debtor immediately defaulting on the plan after obtaining confirmation, the court will not just "routinely" dismiss the case because Debtor elects not to make the plan payment. This could well be a strategic default to allow Debtor to further abuse the Bankruptcy Code.

The court set a dismissal status conference for June 24, 2015, to consider the following:

- A. Whether this case should be dismissed;
- B. If dismissed, whether the dismissal should be with prejudice;
- C. If not dismissed, whether the case should be converted to one under Chapter 7;
- D. If dismissed, whether the court should impose a bar on the filing of bankruptcy cases by Debtor, and each of them, for a period of four (4) years, without obtaining the prior authorization of the chief bankruptcy judge in the district in which they seek to file a bankruptcy case;
- E. Imposition of Rule 9011 sanctions and sanctions pursuant to the inherent powers of the court;
- F. Referral of this case to the United State District Court for consideration of punitive sanctions; and
- G. Such other remedies and relief as appropriate.

Order, Dckt. 76.

In addition to ordering the two Debtors and their counsel to appear in person at the hearing, no telephonic appearances permitted, the court also ordered that any Responses addressing issues and matters to be considered by the court in determining whether the case should be dismissed, converted, sanctions ordered, or other relief, shall be filed and served on all parties in interest, including the U.S. Trustee, on or before June 1, 2015. Replies, if any, to such Responses shall be filed and served on or before June 15, 2015. *Id.* No Response or other pleadings relating to the court's hearing order, the dismissal of the case, or possible

sanctions have been filed as of the court's June 19, 2015 review of the docket.

BANKRUPTCY COURT CIVIL SANCTION POWERS

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings filed with the court. If a party or counsel violates the obligations and duties imposed under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situated.

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. a person's right to present claims and assert rights before the federal courts is a not a license to abuse the judicial process and treat the courts merely as a tool to abuse others.

Nevertheless, "[f]lagrant abuse of the judicial process cannot be tolerated because it enables one person to preempt the use of judicial time that properly could be used to consider the meritorious claims of other litigants." *De Long*, 912 F.2d at 1148; see *O'Loughlin v. Doe*, 920 F.2d 614, 618 (9th Cir. 1990).

Molski v. Evergreen Dynasty Corp, et al, supra , pg 1057. In the Ninth Circuit the trial courts apply a four factor analysis in determining if and what type of pre-filing or other order should properly be issued based on the conduct of the party at issue.

1. First, the litigant must be given notice and a chance to be heard before the order is entered.
2. Second, the district court must compile "an adequate record for review."

3. Third, the district court must make substantive findings about the frivolous or harassing nature of the plaintiff's litigation.
4. Finally, the vexatious litigant order "must be narrowly tailored to closely fit the specific vice encountered.

Id.

The Debtor's repetitive filing of bankruptcy cases, confirming plan, making promises, breaking promises, and then defaulting in plans so they can then file a series of bankruptcy cases which fail to fulfill the purpose of the bankruptcy laws demonstrates abusive conduct and misuse of the bankruptcy laws. Though the bankruptcy court is open to all and a person's financial, personal, or other missteps are not a bar to seeking the extraordinary relief available, debtors must seek the relief and prosecute the cases in good faith.

The court is cognizant of the significant impact the filing of a bankruptcy case has on the not only the Debtor, but creditors and other persons. Even if, due to the repeated filings and the provisions that Congress has placed in a subparagraph of an subsection of the Bankruptcy Code, the automatic stay does not go into effect, the mere presentation of a petition and the significant sanctions imposed on someone violating the stay can work to prevent creditors from legitimately enforcing their rights. In these cases the Debtors have filed a series of non-productive Chapter 13 cases, which appear to exist only for the purpose of deterring a creditor from proceeding with a foreclosure on real property. The Debtors have been afforded multiple opportunities to prosecute and complete good faith, bona fide Chapter 13 plans to cure defaults, achieve legitimate interests, and ultimately obtain the bankruptcy prize – their bankruptcy discharge. While obtaining the benefit of the automatic stay, whether actual or improperly represented to exist, the Debtors have advance no legitimate, good faith bankruptcy plans. Instead, they have visited financial hardships and burdens on creditors.

The court has weighed the options, ranging from just dismissing the current case, as it has done for the four prior cases, to imposing an outright bar on the Debtor filing a bankruptcy case. Clearly, some limits need to be placed on the Debtor to prevent the abuse and attempted abuse of the bankruptcy court, bankruptcy laws, state court judgments, and third-parties. Because the Debtors know how to use the bankruptcy process to tie up the creditors, mimic conduct of a good faith debtor in confirming a plan, and then "stumbling" into a default which causes the case to be dismissed, so the Debtors can then daisy chain bankruptcy cases, merely imposing a pre-filing review requirement would be ineffective. In fact, a mere pre-filing review requirement would make the court complicit with the Debtors in improperly abusing creditors.

Having filed, obtained the benefit of, and then defaulted so that they could just file more cases, through six bankruptcy cases in four years, the court enjoins and bars the Debtors, and each of them, from filing any voluntary bankruptcy cases for a period of three years from July 1, 2015, through and including June 30, 2018. Debtors have demonstrated that they have no need for the legitimate and good faith use of any bankruptcy cases for the near future. A three year ban should be sufficient to protect existing creditors from further abuse and damage from Debtors bad faith filing of bankruptcy cases. It should also allow such creditors sufficient time to diligent prosecute any existing rights and claims they have through the state courts or district

courts. If a creditor, due to the delays caused in the state court system or delays cause by abusive conduct of the Debtors in the non-bankruptcy litigation believes that an extension of the bar of filing should properly be extended, such relief may be requested from this court for cause.

The court shall also order that the Clerk of any bankruptcy court or district court is authorize to reject the filing of any bankruptcy petition or other pleadings filed by or on behalf of either or both of the Debtors relating to the commencement of a bankruptcy case for both or either of the Debtors.