

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

October 2, 2013 at 10:00 a.m.

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1. [12-37004-E-13](#) GLORIA WELLINGTON MOTION TO DISMISS CASE  
NLE-1 Peter G. Macaluso 9-4-13 [[112](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g). October 1, 2013

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$24,200.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**OPPOSITION**

Counsel for the Debtor, Gloria Wellington, replied to the Motion to Dismiss the case by stating that Debtor will set, file and serve a modified plan and be current under the Plan by the date of the hearing.

This bankruptcy case was filed on September 20, 2012 by the Debtor and her current counsel. The initial plan was confirmed by the court's order filed on December 12, 2012. This is the Debtor's third bankruptcy case since 2010.

The first case was filed on October 4, 2010, with the Debtor represented by the same attorney as is her counsel in this case. Bankr. E.D. Cal. No. 10-46452. The Debtor could not confirm a plan in the first bankruptcy case. The court filed its order dismissing the bankruptcy case on December 7, 2011. The case was dismissed because of the Debtor's inability to confirm a plan. The Civil Minutes for denial of confirmation of the plan state that (1)

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the Debtor was in default in the plan payments, (2) the plan provided for inconsistent treatment of the Vericrest claim, and (3) the plan term would exceed 60 months. Civil Minutes, 10-46452 Dckt. 140.

On December 23, 2011, the Debtor filed her second bankruptcy case, against represented by the same attorney as is her counsel in the present case. Bankr. E.D. Cal. 11-49530. On August 15, 2012, the court filed its order dismissing the second bankruptcy case. The order states that the Debtor failed to make \$22,120.00 of required plan payments as theretofore ordered by the court (having made only \$15,300.00 in payments. Order, 11-49530.

The Chapter 13 Trustee has now filed a motion to dismiss this case, the Debtor's third bankruptcy case filed since October 2010. The grounds are that the Debtor has defaulted in \$24,200.00 in payments required under the Plan that she has confirmed in this case. Plan, Order; Dckts. 7, 48. Under the confirmed Plan the Debtor is required to make payments of \$3,100.00 a month to the Chapter 13 Trustee.

On February 14, 2013, the Debtor filed a proposed modified plan which reduced the plan payments to a total of \$6,200.00 through January 25, 2013, and then \$500.00 a month for 56 months commencing in February 2013. The court denied confirmation of a plan based on the Debtor not being able to provide sufficient evidence of an ability to make even the \$500.00 a month payments. Civil Minutes, Dckt. 85.

On June 24, 2013, the Debtor filed a second proposed modified plan. Dckt. 94. This plan requires payments of \$8,200.00 through May 2013, and then \$600.00 a month payments for 52 months starting in June 2013. Plan, Dckt. 94. The court denied confirmation of this plan, again because of the Debtor's inability to show a financial ability to perform the plan. Civil Minutes, Dckt. 109. The court's ruling in the Civil Minutes includes the following,

"No current financial information is provided. Rather, the Debtor merely tells the Chapter 13 Trustee, U.S. Trustee, and Creditors that she will make the payments because she says she can make the payments. With respect to the court, she effectively says I know better, you don't need to know the actual facts, just blindly sign whatever I put in front of you.

This Debtor has dramatically failed under the prior plan which she swore that she could fund and confirmation was proper. The Debtor did not have to prove her ability to pay in open court, but apparently convinced the Trustee that she could and would make the payments. The Trustee did not object, nor did any other creditors, so the Debtor was able to confirm a plan without having to prove the feasibility of a proposed plan. The Debtor has now proven that the financial information provided was either inadvertently not accurate or affirmatively misstated to achieve a predetermined goal irrespective of the truth. The Debtors testimony is not credible, and her legal and factual conclusions cannot replace providing the court with evidence and leaving the court to

struggle with coming to the actual factual and legal conclusions."

The present Motion to Dismiss computes the total payments of \$34,100.00 which have come due under the confirmed plan, for which the Debtor has paid only \$9,900.00.

The Debtor's response is only her attorney's argument that the Debtor will have yet another proposed modified plan filed in this case. Nothing has been presented to the court as to why the Debtor has failed to make payments as promised (whether under the confirmed plan or the various proposed modified plans which the Debtor asserted under penalty of perjury she could fund).

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.

2. [11-21105-E-13](#) MICHAEL/DISHAR GERAGHTY MOTION TO DISMISS CASE  
NLE-1 Eric John Schwab 9-4-13 [[97](#)]

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 September 4, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,312.02 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Moreover, Trustee argues that the Debtor's current proposed plan may take 72 months to complete. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Under the additional provision 7.01.3, the debtor was to turn over tax returns when received. While the additional provisions do not specify a time or amount for the tax refund, the Trustee has not received any additional funds from the tax returns. The Franchise Tax Board and the Internal Revenue Service resolved the claims over two years ago. Debtor's failure to file the return is grounds to dismiss the case.

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

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

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

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

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

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

3.     13-27106-E-13     **MARK RUBENDALL**                             **MOTION TO DISMISS CASE**  
          NLE-1             David Foyil                                 9-4-13 [[24](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss, 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, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss.**

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 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 is dismissed without prejudice.

4.     09-22516-E-13     **SHONG THOR AND MALEE**                             **MOTION TO DISMISS CASE**  
          DPC-3             VANG-THOR                                 8-27-13 [[45](#)]  
                           Steele Lanphier

**CONVERTED 9-20-13**

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

5. [12-39816-E-13](#) CAROL CROUCH  
NLE-1 Peter G. Macaluso

MOTION TO DISMISS CASE  
9-4-13 [[133](#)]

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 September 4, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee'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 August 6, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

6. [10-41917-E-13](#) MALINDA PURDEY  
DPC-2 Jeffrey S. Ogilvie

MOTION TO DISMISS CASE  
8-27-13 [[54](#)]

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,152.75 delinquent in plan payments, which represents multiple months of the \$717.55 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Prior to the hearing, another payment of \$717.55 will come due. Therefore, the Debtor will need to pay \$2,870.30 by the hearing date to bring the plan current.

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. [09-31318-E-13](#) PAMELA TRAFTON MOTION TO DISMISS CASE  
DPC-2 Richard D. Steffan 8-27-13 [[50](#)]

CONVERTED 9-27-13

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Motion to Dismiss is denied as moot.** No appearance required.

The Trustee seeks the dismissal of this case. However, on September 27, 2013, the Debtors filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 27, 2013. *McFadden*, 37 B.R. at 521.

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 as moot, the case having been converted to one under Chapter 7.

8. [10-29118-E-13](#) **TERRIE WILSON**  
DPC-5 **Peter G. Macaluso**

**MOTION TO DISMISS CASE**  
8-27-13 [[71](#)]

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

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

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

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

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

9. [13-29521-E-13](#) ANTHONY AMMIRATO  
TSB-2 Pro Se

MOTION TO DISMISS CASE  
9-13-13 [[21](#)]

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 September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,092.00 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 presented no opposition to the Motion.

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

The 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, or a written statement that no such documentation exists. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

10. [13-30221](#)-E-13 MICHAELA VAN DINE AND ORDER TO SHOW CAUSE - FAILURE  
PIOTR REYSNER TO PAY FEES  
Pro Se 9-6-13 [[20](#)]

**CASE PREVIOUSLY DISMISSED AS TO PIOTR REYSNER ONLY**

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on September 3, 2013). The court docket reflects that on September 25, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

11. [08-35527-E-13](#) GRACIA CASTANEDA  
DPC-4 Peter G. Macaluso

MOTION TO DISMISS CASE  
8-27-13 [[125](#)]

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

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

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

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

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

12. [08-35031-E-13](#) FERRIC/STACY COLLONS  
DPC-14 Peter G. Macaluso

MOTION TO DISMISS CASE  
8-27-13 [[112](#)]

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$960.00 delinquent in plan payments, which represents multiple months of the \$320.00 plan payment. The Debtor has paid a total of \$19,030.00 as of June 24, 2013, while total of \$19,990.00 was due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Prior to the hearing, another \$320.00 will come due. Therefore, Debtor needs to pay \$1,280.00 by the hearing date to bring this plan current.

#### **OPPOSITION**

Counsel on behalf of the debtor filed an opposition stating that the Debtor has paid \$19,990.00 as of June 24, 2013 and intends to be current on or before the date of this hearing.

However, no evidence has been provided that Debtors are in fact current.

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

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

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

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

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

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

13. [13-26831](#)-E-13 **LE AIRHEART**  
**C. Anthony Hughes**

**ORDER TO SHOW CAUSE - FAILURE**  
**TO PAY FEES**  
8-23-13 [[25](#)]

**Tentative Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on August 19, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

14. 13-25635-E-13 JEFFREY BRADFORD  
TSB-1 Andy C. Warshaw

MOTION TO DISMISS CASE  
9-13-13 [35]

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 September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 13, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

15. [08-34642-E-13](#) RUDY/DIANIRA SOTO MOTION TO DISMISS CASE  
DPC-3 John A. Tosney 8-27-13 [[106](#)]

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,095.00 delinquent in plan payments, which represents multiple months of the \$1,365.00 plan payment. Prior to the hearing, another \$1,365.00 will come due. Therefore, Debtor will need to pay \$5,460.00 prior to the hearing to bring this plan current. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

16. [10-28744-E-13](#) **JACK/EILEEN SOUZA** **MOTION TO DISMISS CASE**  
**DPC-1** **Eric John Schwab** **8-27-13 [54]**

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,120.00 delinquent in plan payments, which represents multiple months of the \$280.00 plan payment. Prior to the hearing, another \$280.00 will come due. Therefore, Debtor will need to pay \$1,400.00 by the hearing date to bring this plan current. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

17. [11-40549-E-13](#) DAVID/ALISON WISTROM CONTINUED MOTION TO DISMISS  
TSB-1 Eric John Schwab, CASE  
Thomas L. Amberg 4-8-13 [[32](#)]

CONT. FROM 7-31-13, 5-8-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on April 8, 2013. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

#### PRIOR HEARING

The Trustee seeks to dismiss the case on the basis that the Debtor is in material default under the terms of the confirmed Plan, the Plan now requiring 113 months to complete. This is in excess of the 60 month statutory maximum imposed by 11 U.S.C. §1322(d). The default was created by priority claims as filed exceeded the amount scheduled by \$127,460.03.

Debtor opposes the motion, asserting that they are in the appeals process with the Tax Court. Debtors state they anticipate that, once their audit case is completed, their current plan will be feasible and that if additional liability remains after the audit case is completed, they will modify their plan.

Debtors are performing their Chapter 13 Plan in this case, which may or may not be sufficient. The Plan requires a significant monthly payment to fund substantial payments to the taxing agencies.

The court notes that on July 16, 2013, Dckt. 47, the court granted the Internal Revenue Service relief from the automatic stay to continue litigation

in the Tax Court, the IRS contending that it and Debtors had reached a settlement (in reality, the Internal Revenue Service is accepting the Debtors' stated position on the taxes) regarding the proposed deficiency for tax year 2008. However, the court has not yet approved a compromise or settlement nor has the IRS amended its proof of claim to date. Therefore, it appears the Debtors still may be in material default under the terms of the confirmed Plan.

No update has been provided to the court to date on the status of the settlement with the IRS.

The court continues the Motion to Dismiss to xxxx, to allow the parties time to implement the settlement agreement.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Dismiss is continued to xxxx.

18. [13-21349-E-13](#) REGINALD/TONE SCARBROUGH MOTION TO DISMISS CASE  
TSB-2 Matthew R. Eason 9-9-13 [[124](#)]

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

19. [10-36950-E-13](#) RICHARD/AUTUMN NOVO  
NLE-1 Christian J. Younger

MOTION TO DISMISS CASE  
8-30-13 [[71](#)]

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

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

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

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

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

20. [12-39152-E-13](#) SHEILA/SCOTT EDWARDS  
NLE-2 Rebecca E. Ihejirika

MOTION TO DISMISS CASE  
9-3-13 [[145](#)]

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

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

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

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

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

21. [09-48453-E-13](#) STEVEN/DONNA MENSER  
DPC-6 Julian C. Roberts

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

**CONT. FROM 9-4-13**

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

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

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

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

**PRIOR HEARING**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,294.98 delinquent in plan payments, which represents multiple months of the \$691.40 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR'S OPPOSITION**

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

**TRUSTEE'S RESPONSE**

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

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

The Trustee states the confusion began when the Trustee filed an objection to the Fourth Amended Plan correctly pointing out that \$18,017.46 has been paid to BAC Home Loan but the objection incorrectly gave the impression that Debtors had overpaid the Trustee by \$10,627.35. Debtors apparently had paid into the plan what they needed to, but because the payment terms of the Fourth Amended Plan failed to account for the past payments made by the Debtors, it gave the appearance of overpayments, rather than an actual overpayment.

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

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

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

## **DISCUSSION**

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

The following charts summarize the court's analysis:

**Plan Payments to Trustee by Debtors Under Plan**

Payments Made Prior to Fifth Amended Plan			\$31,265.35
Payments Made Under Fifth Amended Plan as of Motion to Dismiss			\$13,681.42
Total Plan Payments as of Motion to Dismiss			\$44,946.77

**Plan Payments to Creditors and Expenses**

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

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

**CONTINUANCE**

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

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

**TRUSTEE'S SUPPLEMENTAL PLEADINGS**

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

Payments Made Prior to 5 <sup>th</sup> Amended Plan	\$31,265.35
Payments Made Under 5 <sup>th</sup> Amended Plan as of Motion to Dismiss	\$13,681.42
<b>Total Paid into Plan as of Motion to Dismiss</b>	<b>\$44,946.77</b>
<b>PAYMENTS TO BE PAID MADE TO CREDITORS</b>	
Commonwealth Central Credit Union*	\$ 3,154.82
Commonwealth Central Credit Union*	\$16,280.74
Internal Revenue Service**	\$14,281.72
<b>Total Amount to be Paid to Creditors</b>	<b>\$33,717.28</b>
<b>ADMINISTRATIVE EXPENSES</b>	
Attorney Fees	\$ 4,000.00
Trustee Fees Received as of January 1, 2013	\$ 1,972.56
Estimated Trustee Fees (Based on 4% of Class 5 Remaining Balance)	\$ 510.00
<b>Total Amount of Administrative Fees</b>	<b>\$40,199.84</b>
Home Loan Payments made by Trustee Prior to 5 <sup>th</sup> Amended Plan	\$18,017.46
	\$58,217.30
<b>Less Total Paid Into Plan as of Motion to Dismiss</b>	<b>\$44,946.77</b>
<b>Total Remaining to be Paid into Plan</b>	<b>\$13,270.53</b>

\* These Class 2 creditors are paid in full. Payments noted in above chart include interest.

\*\* Although two Class 5 creditors listed (both Internal Revenue) in the plan, the claim submit was based on the compilation of amount owing to the creditor. Therefore, for the purposes of this analysis Class 5 creditor listed once. To date, principal paid is \$1,521.19, which leaves a \$12,760.53 remaining balance to be paid through the plan.

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

Debtor has not filed supplemental documents to date.

Based on the forgoing court analysis and supplemental Trustee analysis, the debtor is delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The 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. [11-27453-E-13](#) **JEFFERSON/LESLIE SCHAR** **MOTION TO DISMISS CASE**  
DPC-1 **Mark A. Wolff** 8-27-13 [[31](#)]

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$975.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**OPPOSITION**

Debtors respond, stating they are working on filing a First Modified Chapter 13 Plan, which will be filed before the hearing on the Motion to Dismiss.

However, no modified plan appears on the docket to date. No explanation is provided how the default has occurred and the ability of the Debtors to fund a plan going forward.

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

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

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

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

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

23. 13-28454-E-13 **TERESA BURNS** **MOTION TO DISMISS CASE**  
TSB-1 **Pro Se** 9-13-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Dismiss and dismiss the case.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its

final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court sustaining Trustee's Objection to Confirmation to Debtor's prior plan on September 10, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c) (1).

The Trustee further alleges that the Debtors have failed to provide copies of the employer payment advices as required under 11 U.S.C. §521(a)(1)(B)(iv). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$300.00 delinquent in plan payments, which represents more than one month of the 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 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).

This is the Debtor's third bankruptcy case filed since July 2012. The first Chapter 13 case was filed on July 16, 2012 and dismissed on September 7, 2012. Bankr. E.D. Cal. 12-33064. The case was dismissed for the Debtor's failure to attend the First Meeting of Creditors and provide copies of the required tax returns. Civil Minutes, 12-33064 Dckt. 20.

The second Chapter 13 case was filed on December 17, 2012. Bankr. E.D. Cal. 12-41550. That case was dismissed on February 25, 2013. The second Chapter 13 case was dismissed for the failure of the Debtor to commence making plan payments and failure to attend the First Meeting of Creditors. Civil

Minutes, 12-41550 Dckt. 31. The Debtor filed an ex parte motion to vacate the dismissal. In denying the ex parte motion, the court addressed substantial feasibility issues and disclosure issues for the Debtor. Order, Id. 59.

This third Chapter 13 case was filed on June 12, 2013. On July 27, 2013, the court filed an order confirming that no automatic stay went into effect in this case as provided by 11 U.S.C. § 362(c)(4)(A). Order, Dckt. 43. The current motion to dismiss asserts a monetary default of \$300.00 in plan payments, with a payment of \$200.00 due on or before September 25, 2013. Further, the Trustee asserts that the Debtor has failed to provide copies of tax returns or copies of employer payment advices (pay stubs). Motion, Dckt. 62.

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

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

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

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

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

25. [13-29759-E-13](#) JEFFREY/NANCY CARDINAL MOTION TO DISMISS CASE  
TSB-1 Robert J. Busch 9-13-13 [[39](#)]

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 September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$254.00 delinquent in plan payments, which represents 1 month of the \$254.00 monthly plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

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

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

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

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

26. [09-21061-E-13](#) CARY/SERENA HOWELL  
NLE-2 Scott A. CoBen

MOTION TO DISMISS CASE  
8-30-13 [[94](#)]

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 August 30, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,400.00 delinquent in plan payments, which represents multiple months of the \$800.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtors respond, stating that they will cure the delinquency prior to the hearing of this matter.

However, no evidence has been presented that the Debtors are in fact current.

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

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

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

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

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

27. [09-42762](#)-E-13 **WALTER WHITNACK AND** CONTINUED MOTION TO DISMISS  
**NLE-4** **NATALIE HARTMAN WHITNACK** CASE  
**Peter G. Macaluso** 8-27-13 [[93](#)]

**CONT. FROM 9-10-13**

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

Proper Notice Provided. The Proof of Service filed on August 27, 2013, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee. By the court's calculation, 14 days' notice was provided.

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

**The court's tentative decision is to deny the Motion to Dismiss without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

**PRIOR HEARING**

The Chapter 13 Trustee moves to dismiss the case on a non-dismissal calendar pursuant to the Civil Minute Order on the Motion to Substitute Party, Dckt. 92. Trustee argues that Debtor has failed to file supplemental pleadings with the court documenting the existence of life insurance, all insurance proceeds spent and the location of the remaining proceeds.

The court continued the hearing to allow the Motion to Substitute Party to be heard. The court granted the Motion on September 10, 2013.

While not resolving the Trustee's questions concerning potential property of the estate, the Debtor has addressed the immediate issue as to having representation for all interests of the Debtors.

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 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.

28. [13-29462-E-13](#) JOHN LONG MOTION TO DISMISS CASE  
TSB-1 David P. Ritzinger 9-13-13 [[26](#)]

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

29. [12-22066-E-13](#) RANDOLPH/TAMARA RILEY MOTION TO DISMISS CASE  
NLE-1 Mary Ellen Terranella 9-4-13 [[36](#)]

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 September 4, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee argues that the Debtor is in material default of the plan, as according to his calculations, the proposed plan will complete in 83 months as opposed to the 60 months proposed. This exceeds the maximum

amount of time allowed under 11 U.S.C. § 1322(d). Filed secured and priority claims were \$38,402.41 greater than scheduled.

## **OPPOSITION**

The Debtors respond, stating that they paid to Bank of America, N.A. the sum of \$31,134.00 by certified funds on or about February 3, 2012, specifically to reduce the amount of mortgage arrears to be paid through their Chapter 13 plan. Debtors assert Mrs. Riley cashed out available retirement funds to make this payment. Debtor's Counsel states that she and Kristi Wells, attorney for Creditor Bank of America, N.A. are working towards resolving what debtors believe is an inaccuracy in Creditors' proof of claim. The parties believe the matter will be resolved prior to the hearing on the motion to dismiss, if not, Debtors will file an objection to the proof of claim filed by Creditor Bank of America, N.A.

## **RESPONSE**

Trustee states he is uncertain upon what basis the debtors' would file an objection to the proof of claim filed by the creditor as the amounts are as of the date of filing. Trustee also argues that the actions by the Debtors raise serious questions regarding Schedules B and C filed by the debtors on February 1, 2012, which may affect the ability to propose any confirmable modified plan.

## **DISCUSSION**

This bankruptcy case was filed on February 1, 2012. Schedule A lists the 1311 Wildplum property as the only real property owned by the Debtors. Schedule A, Dckt. 1 at 12. The Debtors state on Schedule A the property has a value of \$260,000.00 and is subject to liens in the amount of \$552,374.00. On Schedule B the Debtors state under penalty of perjury that they had \$1,100.00 in bank accounts, \$7,500.00 in household goods, \$1,000.00 in baseball cards, \$2,500.00 in jewelry, \$50,000.00 in a 401(k), and four cars with a value of \$13,175.00. *Id.* at 13-15.

On Schedule C the Debtors claim \$45,000.00 of the \$50,000.00 401(k) as exempt. *Id.* at 16. The only secured claim listed on Schedule D is that of BAC Home Loans Servicing, LP in the amount of \$552,374.00. *Id.* at 17. In response to Question 3 on the Statement of Financial Affairs the Debtors state that there were no payments made within the 90 day or 1 year period prior to the commencement of the bankruptcy case. *Id.* at 32.

In responding to the Motion to Dismiss, the Debtors do not provide the court with any declarations. Rather, they merely provide the argument of their attorney. Dckt. 40. The argument is that on February 3, 2012, the Debtors took \$31,134.00 from a retirement account (which presumably is or was the \$50,000.00 401(k) account) which is property of the estate and then paid that money to Bank of America, N.A. on its claim in this case.

The Debtors' confirmed Chapter 13 Plan does not provide for the post-petition payment of \$31,134.00 to Bank of America, N.A. Plan, Dckt. 5. The order confirming the Chapter 13 Plan does not provide for the payment of \$31,134.00 to Bank of America, N.A. Order, Dckt. 20.

The confirmed Chapter 13 Plan states that the pre-petition arrearage on the Bank of America, N.A. claim was \$20,614.00. Plan ¶ 3.09. The Opposition argued by counsel for the Debtors is that they intentionally made the post-petition payment to Bank of America, N.A. to reduce the pre-petition arrearage so that a lower amount could be provided for in the Chapter 13 Plan.

The court's review of the Docket can find no disclosure of this \$31,134.00 payment to Bank of America, N.A. This clandestine payment has been kept a secret from creditors, the Chapter 13 Trustee, the U.S. Trustee, and the court. To the extent that the Debtors "thought" that it was a pre-petition payment, no disclosure of the payment is made in the Statement of Financial Affairs. Only now, facing the dismissal of the case, do the Debtors argue that their secret payment is a basis for denying the Motion.

The Trustee is correct and cause exists to convert or dismiss this case. Debtors cannot pick and choose the benefits of the Bankruptcy Code they want and discard the obligations. The Debtors having now brought to light that they made a secret payment to Bank of America, N.A., as well as having not addressed the additional arrearage owed on the Bank of America, N.A. claim, the court concludes that the case should be dismissed.

Cause exists to dismiss the Chapter 13 case, and it is so 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 Chapter 13 case is dismissed.

**IT IS FURTHER ORDERED** that the dismissal is without prejudice to the Chapter 13 Trustee, U.S. Trustee, creditors, or other parties in interest seeking to amend this order to provide that the dismissal of the bankruptcy case is with prejudice. Any motion to amend this order shall be filed and served by October 31, 2013.

The dismissal of the case does not limit the power of the court or ability of parties in interest to address the conduct of the Debtors in this case. 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 contemp 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).

30. [13-29966-E-13](#) GARY BROWN  
TSB-1 Pro Se

MOTION TO DISMISS CASE  
9-13-13 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$100.00 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 presented no opposition to the Motion.

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

The 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).

Since March 2012, Gary Brown has filed five Chapter 13 cases, including the current case. These cases, all in the Eastern District of California are: 12-24152, 12-36219, 13-26709, 13-28893, and 13-29966 (current case). Other than commencing the cases, the Debtors does not appear to have made any effort to prosecute the cases and has not confirmed a plan in any cases.

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

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

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

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

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

31. [08-26968-E-13](#) **GREGG/MECHELLE WEBB** **MOTION TO DISMISS CASE**  
**DPC-1** **Kian Mottahedeh** **8-21-13 [60]**

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 August 21, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,082.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

32. [12-22269-E-13](#) **GARY PIMENTEL** **MOTION TO DISMISS CASE**  
**NLE-1** **Mark W. Briden** **9-4-13 [34]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the debtor is in material default of the confirmed plan. Trustee states that debtor failed to provide for the Priority Claim of the Franchise Tax Board (Proof of Claim No. 4) in the amount of

\$372.32. Debtor was provided a Notice of Filed Claims on October 9, 2012, Dckt. 31, which listed this claim.

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

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

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

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

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

33. [08-32971-E-13](#) JACK/ANNA GONZALES MOTION TO DISMISS CASE  
DPC-1 Mark A. Wolff 8-27-13 [[93](#)]

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

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

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

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

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

34. [08-37972-E-13](#) JEFFREY/PATRICIA GRAY MOTION TO DISMISS CASE  
DPC-3 Stuart M. Price 8-27-13 [[93](#)]

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

35. [13-20879-E-13](#) BRADLEY NYDEGGER MOTION TO DISMISS CASE  
NLE-1 W. Steven Shumway 9-3-13 [[54](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 3, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on November 5, 2013.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$579.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtor's Counsel filed a response, stating Debtor is currently living in Australia and renting his house. The tenant moved out after his last proposed plan was filed and left him unable to make the payments in the amounts proposed in the plan. Counsel states Debtor is interviewing new tenants and will have the house rented by the first of the month. Counsel states Debtor has filed an amended plan to provides for this temporary situation and set it for November 5, 2013.

The court continues the hearing on the Motion to Dismiss to 3:00 p.m. on November 5, 2013 to be heard with the pending 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 hearing on the Motion to Dismiss is continued to 3:00 p.m. on November 5, 2013.

36. [13-23180](#)-E-13 TONG/ARLENE BE CONTINUED MOTION TO DISMISS  
TSB-1 Eric John Schwab CASE  
5-29-13 [[49](#)]  
CASE DISMISSED 9/5/13

**Final Ruling:** The case having previously been dismissed, the Motion is denied as moot.

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

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

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

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

37. [13-28480](#)-E-13 CHARLES/TAMYRA HEARD ORDER TO SHOW CAUSE - FAILURE  
Peter G. Macaluso TO PAY FEES  
8-29-13 [[38](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on August 26, 2013). The court docket reflects that on September 3, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

38. [13-30382-E-13](#) STACY JOHNSON MOTION TO DISMISS CASE  
TSB-2 Pro Se 9-13-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 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).

Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent

pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

39. [10-45084-E-13](#) **WILLIAM/TINA PINZON** **MOTION TO DISMISS CASE**  
**DPC-1** **Jeffrey S. Ogilvie** **8-27-13 [66]**

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 August 27, 2013. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$11,309.20.00 delinquent in plan payments. Failure to make plan payments

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

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.

40. [13-28185-E-13](#) GAYLE HAAG MOTION TO DISMISS CASE  
NLE-2 Catherine King 9-4-13 [[18](#)]

**CASE DISMISSED 9/12/13**

**Final Ruling:** The case having previously been dismissed, the Motion is denied as moot.

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

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

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

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

41. [13-29191](#)-E-13    **MIGUEL CHAVEZ JUAREZ AND**                    **MOTION TO DISMISS CASE**  
**TSB-1**                    **ISAURA CHAVEZ**                    **9-13-13 [27]**  
                                 **Patricia Wilson**

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 September 13, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$3,450.00 delinquent in plan payments, which represents one month of the plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

42. [08-35292](#)-E-13 DANIEL/CAROLYN WALTHER MOTION TO DISMISS CASE  
DPC-2 Mark A. Wolff 8-27-13 [[49](#)]

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

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

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

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

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

43. [13-28692-E-13](#) RACHELLE HICKS  
NLE-1 Scott J. Sagaria

MOTION TO DISMISS CASE  
9-3-13 [[28](#)]

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 September 3, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$6,200.00 delinquent in plan payments, which represents multiple months of the \$3,100.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Trustee asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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).

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. [13-27994-E-13](#) DANIEL BELL AND AIDA MOTION TO DISMISS CASE  
TSB-1 RISTAU 9-9-13 [[24](#)]  
John A. Tosney

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 September 9, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,840.00 delinquent in plan payments, which represents multiple months of the \$1,045.00 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 sustaining the Trustee's Objection to Confirmation to Debtor's prior plan on August 20, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for

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

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

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

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

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

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

45. [09-36895-E-13](#) JOHN WRIGHT AND DEBORAH MOTION TO DISMISS CASE  
DPC-3 JURSS 8-27-13 [[51](#)]  
Stephen M. Reynolds

**CONVERTED 9-27-13**

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 August 27, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Motion to Dismiss is denied as moot.** No appearance required.

The Trustee seeks the dismissal of this case. However, on September 27, 2013, the Debtors filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f) (3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a

proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 27, 2013. *McFadden*, 37 B.R. at 521.

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 as moot, the case having been converted to one under Chapter 7.

46. [13-27996-E-13](#) **FREDERICK/JACQUELYN** **MOTION TO DISMISS CASE**  
**TSB-1** **TURNER** **9-9-13 [54]**  
**Robert Hale McConnell**

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 September 9, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,244.00 delinquent in plan payments, which represents one month of the plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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