

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

October 15, 2014 at 10:00 a.m.

1. [11-48050](#)-E-7 STAFF USA, INC.  
MHK-4

CONTINUED EVIDENTIARY HEARING  
RE: MOTION FOR ORDER TO SHOW  
CAUSE  
7-18-13 [[257](#)]

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.  
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The court's decision is xxxxx
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CONT. FROM 12-12-13, 10-24-13, 8-29-13

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's Attorney, Chapter 11 Trustee, all creditors, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

The Motion for Order to Show Cause 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).

OCTOBER 15, 2014 HEARING

At the hearing, -----

OCTOBER 1, 2014 HEARING

Robert Cameron, attorney for W. Austin Cooper, a Professional Corporation, filed with the court a notice of unavailability of W. Austin Cooper because of medical reasons. It is unknown at this time whether the medical impairment is short-term or long-term, for which a personal representative may need to be appointed for Mr. Cooper personally. W. Austin Cooper is representing himself, in pro se.

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No Direct Testimony Statements was presented by any of the parties. Only the Plan Administrator has presented exhibits, 1-17. The time for presenting Direct Testimony States and Exhibits has closed, and has not been extended by the court due to this eve of trial stated disability and requested continuance.

The court ordered that a Status Conference will be conducted on October 15, 2014 at 9:59 a.m. to determine when the evidentiary hearing should be conducted and whether Mr. Cooper has a long term medical impairment which will require the appointment of a personal representative. If there is such impairment and the Plan Administrator cannot call Mr. Cooper as an adverse witness, the parties shall address whether there is a reasonable accommodation which can be made for Mr. Cooper to provide "hostile" testimony when called by the Plan Administrator and proper rebuttal testimony, or whether such testimony on both sides is not available.

#### **JULY 9, 2014 HEARING**

No appearance was made at the hearing by W. Austin Cooper or W. Austin Cooper, a Professional Corporation. The issued an Evidentiary Hearing Order setting the following dates and deadlines:

- A. Evidence shall be presented as provided in Local Bankruptcy Rule 9017-1.
- B. The Evidentiary Hearing shall be conducted at 9:30 a.m. on October 1, 2014
- C. Responses to evidentiary objections shall be filed, lodged with the court, and served by September 24, 2014.
- D. September 17 - Hearing Briefs and Evidentiary Objections shall be filed, lodged with the court, and served on or before September 17, 2014.
- E. W. Austin Cooper and W. Austin Cooper, a Professional Corporation, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before September 10, 2014.
- F. Thomas A. Aceituno, the Chapter 7 Trustee, shall lodge with the court and serve Direct Testimony Statements and Exhibits on or before August 27, 2014.
- G. The Order shall also provide,

The court further ordered that pursuant to Federal Rule of Bankruptcy Procedure 9014(c), the court made Federal Rule of Civil Procedure 55 and Federal Rule of Bankruptcy Procedure 7055 effective and each Rule applies in this Contested Matter for the Order to Show Cause. No default of a party shall be entered by the Clerk of the Court until after July 25, 2014.

#### **MAY 28, 2014 HEARING**

At the hearing it was asserted by W. Austin Cooper that it is his

October 15, 2014 at 10:00 a.m.

professional corporation which must be a party to this matter, as he asserts that it is the Corporation which received all payments and that W. Austin Cooper did not personally receive any of the monies at issue.

Pursuant to the concurrence of the Trustee and W. Austin Cooper, pursuant to Federal Rule of Civil Procedure 19 and Federal Rules of Bankruptcy Procedure 7019, 9014; the court joins W. Austin Cooper, a Professional Corporation, as a respondent to the Order to Show Cause and the Trustee's Motion requesting the Order to Show Cause. In each place in the Motion and the Order to Show Cause where the reference is made to "W. Austin Cooper," it is deemed to also state that it also applies to W. Austin Cooper, a Professional Corporation."

At the hearing W. Austin Cooper confirmed that he is the agent for service of process for W. Austin Cooper, a Professional Corporation. The California Secretary of State website provides the same information, with an address of 2150 River Plaza Dr., Ste 164, Sacramento, California 95833 for the agent.

#### **PRIOR HEARING**

Jon Tesar, Chapter 11 Trustee requested an order that directs W. Austin Cooper, a Professional Corporation to show cause why it should not be required to disgorge a payment made to Cooper by the Debtor for legal services in this Chapter 11 case.

Trustee filed a Notice of Intent to continue the hearing on the motion, as he has received notice that attorney Cooper will be unable to make a timely appearance in regard to this matter due to health concerns.

Trustee states he will appear at the hearing to request that the hearing be continued to a date and time agreeable to interested parties and to the court. The court continued the hearing to October 24, 2013.

#### **OCTOBER 24, 2013 HEARING**

The parties have not filed any supplemental pleadings explaining whether an agreement was reached. Mr. Cooper has not filed a response to the Motion to date.

2. [10-23577](#)-E-11 GLORIA FREEMAN  
MHK-1

CONTINUED MOTION FOR  
ADMINISTRATIVE EXPENSES  
11-30-12 [[516](#)]

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor on November 30, 2012. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The court's decision is to -----
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OCTOBER 15, 2014 HEARING

At the hearing, ----

OCTOBER 1, 2014 HEARING

Robert Cameron, attorney for W. Austin Cooper, a Professional Corporation, filed with the court a notice of unavailability of W. Austin Cooper because of medical reasons. It is unknown at this time whether the medical impairment is short-term or long-term, for which a personal representative may need to be appointed for Mr. Cooper personally. W. Austin Cooper is representing himself, in *pro se*.

No Direct Testimony Statements was presented by any of the parties. Only the Plan Administrator has presented exhibits, 1-17. The time for presenting Direct Testimony States and Exhibits has closed, and has not been extended by the court due to this eve of trial stated disability and requested continuance.

The court ordered that a Status Conference will be conducted on October 15, 2014 at 9:59 a.m. to determine when the evidentiary hearing should be conducted and whether Mr. Cooper has a long term medical impairment which will require the appointment of a personal representative. If there is such impairment and the Plan Administrator cannot call Mr. Cooper as an adverse witness, the parties shall address whether there is a reasonable accommodation which can be made for Mr. Cooper to provide "hostile" testimony when called by

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the Plan Administrator and proper rebuttal testimony, or whether such testimony on both sides is not available.

#### **JULY 9, 2014 HEARING**

The Motion is continued to 9:30 a.m. on October 1, 2014.

#### **JULY 1, 2014 HEARING**

The Motion is continued to be addressed upon conclusion of the Orders to Show Cause to disgorge fees from W. Austin Cooper and/or W. Austin Cooper, a Professional Corporation.

#### **MAY 28, 2014 HEARING**

It is reported to the court that as part of the settlement between the Trustee/Plan Administrator and Laurence Freeman, the Trustee/Plan Administrator anticipates being able to resolve this Motion and several other disputes with Gloria Freeman.

#### **PRIOR HEARINGS**

##### **Motion for Administrative Expenses by Staff U.S.A. Trustee**

Thomas Aceituno, the successor Chapter 7 Trustee to Jonathan Tesar, the former Chapter 11 Trustee in case number 11-48050-E-11, Staff U.S.A., seeks an order allowing an administrative claim in the amount of \$103,792.79 in favor of the Staff Estate. FN.1. Jon Tesar stated that this claim was incurred as an administrative claim in connection with preserving the bankruptcy estate of Gloria Freeman. Jon Tesar stated that November 30, 2012 was the last day to file and serve a motion for allowance of administrative expenses in the instant case.

Because this matter has been pending for so long and was originally asserted by Jonathan Tesar as the Chapter 11 Trustee, the court has continued to use in this ruling he name "Jon Tesar" as the identifier for the person filing the Motion and asserting the claim - which is deemed a reference to the Thomas Aceituno, as successor to Jonathan Tesar as the fiduciary of the bankruptcy estate, serving as the current Chapter 7 Trustee.

#### Background

Jon Tesar states that on February 16, 2010 Debtor Gloria Freeman filed a Chapter 11 petition and on January 11, 2011 David Flemmer was appointed Trustee of the Freeman Estate. Jon Tesar states that on August 1, 2011 Staff filed a Chapter 11 petition in the Northern District of California and the case was later transferred to the Eastern District. Jon Tesar states that on June 13, 2012 the court approved his appointment as trustee of the Staff Estate, a position which he continues to hold.

Jon Tesar states that Debtor was the president of Staff, sole shareholder of Staff, the debtor in possession of Staff, and was responsible for Staff's business assets and financial affairs. Jon Tesar states that once he was appointed Trustee on June 13, 2012 Debtor's authority to control Staff

ended. Jon Tesar states that after Debtor's petition date and before he was appointed Trustee of Staff, Debtor caused Staff to make disbursements for the benefit of Debtor's Estate and/or the benefit of Debtor personally.

Jon Tesar argues that the amounts disbursed total \$103,792.79 and were likely to some benefit to the Staff Estate. Jon Tesar states that it is necessary for him to further analyze the disbursements to determine the extent of the benefit and necessity of making various expenditures. Jon Tesar states that the disbursements appear to include attorneys' fees, insurance, and travel. Jon Tesar states that he will communicate with Trustee Flemmer to reach a consensus on the allowability of the administrative expenses.

Jon Tesar seeks an order allowing an administrative claim in favor of Staff Estate in the maximum amount of \$103,792.79.

#### **Opposition by Trustee Flemmer**

Trustee David Flemmer objects to the motion for allowance of administrative claim since Trustee Flemmer is currently filing orders to show cause why certain counsel should not be required to disgorge funds received from Staff. Trustee Flemmer requests that the court continue the hearing to a time that aligns with the briefing schedule issued for the orders to show cause.

Trustee Flemmer states that he does not dispute that transfers were made from the Staff Estate to the Freeman Estate. Trustee Flemmer states that Staff made the transfers without the knowledge or consent of the Trustee Flemmer and that presumably Debtor authorized the transfers.

Trustee Flemmer states that the transfers can be divided into four categories:

1.	Auction 10/Premium Access--	\$791.36
2.	Gloria Freeman Personal Expenses/Life, Health and Disability Insurance-----	\$41,961.02
3.	Legal Fees and Expenses----	\$56,530.97
4.	Transfers for the Benefit of Larry Freeman-----	\$4,509.44
	<u>Total</u>	<u>\$103,792.79</u>

Trustee Flemmer states that it appears that Jon Tesar's request for administrative expenses is based on two bases: (1) Jon Tesar may claim that Staff was insolvent at the time of the transfer and that the transfers constituted a prohibited dividend pursuant to California Corporations Code sections 501 and 506 or a fraudulent transfer pursuant to California Code of Civil Procedure section 3439. (2) Jon Tesar seeks an administrative claim pursuant to § 503(b)(1)(A) on the grounds that transfers constituted the actual, necessary costs and expenses of preserving the estate.

Trustee Flemmer objects to the allowance of an administrative expense

except as to the "Legal Fees and Expenses" category. Trustee Flemmer states that as to the "Legal Fees and Expenses" category he is filing an application for orders to show cause why counsel should not disgorge such fees and costs. Trustee Flemmer states that Jon Tesar's motion for allowance of administrative expenses is moot to the extent that money is returned to Staff.

**Auction 10/Premium Access:** Trustee Flemmer states that Auction Ten and Premium Access are businesses owned and operated by Debtor, but which have provided no benefit to the Freeman Estate. Trustee Flemmer states that there is no evidence that the Freeman Estate benefitted from these transfers and the court should not allow an administrative expense related to these transfers. Trustee Flemmer states that, to the extent such transfers are prohibited dividends, they are offset by amounts owed to Debtor for services rendered.

**Gloria Freeman Personal Expenses/Insurance:** Trustee Flemmer states that Debtor caused Staff to transfer an amount of \$18,003.37 for payment of Debtor's personal expenses with an additional \$23,957.65 for life, health, and disability insurance. Trustee Flemmer states that Debtor was entitled to reasonable compensation for services provided to Staff, but that the expenses sought by Staff span 26 months. Trustee Flemmer states there is no evidence that Debtor was paid a salary during this time, but that Jon Tesar should be provided an opportunity to provide such evidence if it exists.

Trustee Flemmer states that transfers to Debtor from March 2010 through May 2012 are more fairly characterized as compensation for services rather than payment of an illegal dividend. Trustee Flemmer states that the transfers, which are equivalent to \$1,554 per month, are reasonable compensation for operating Staff. Trustee Flemmer states that if the transfers are considered compensation for services they are not "actual, necessary costs and expenses of preserving the estate." § 503(b)(1)(A). Trustee Flemmer requests that the court deny the request for administrative expenses.

**Legal Fees and Expenses:** Trustee Flemmer states that Staff has uncovered transfers totaling \$56,530.97 to attorneys hired to work for Debtor or her companies. Trustee Flemmer states that Staff does not have documentation supporting the services provided by these attorneys and it is unclear whether the services were performed for Debtor or for her companies. Trustee Flemmer states that of the total amount paid for legal services, \$15,000-\$20,000 was paid to Austin Cooper, \$16,933 to Steve Berniker, and smaller amounts were paid to other counsel.

Trustee Flemmer states that it is possible for Jon Tesar to recover payments for legal fees under other theories if the work was performed for one of Debtor's companies such that there is no showing of a benefit to the Freeman Estate. Trustee Flemmer states that there is no basis to recover from the Freeman Estate. Trustee Flemmer states that he and Jon Tesar have attempted, albeit unsuccessfully, to obtain information from Mr. Cooper regarding the nature of the services provided and the value to the estate.

**Transfers to Larry Freeman:** Trustee Flemmer states that the amount of 44,509.44 was transferred to Larry Freeman and it is unclear how these transfers could be considered an administrative expense.

#### **Debtor's Opposition**

On May 23, 2013 Debtor filed an opposition supporting the Chapter 11 Trustee's position to deny the motion. Debtor states that she disagrees with Chapter 11 Trustee's position regarding attorney's fees and expenses and states that said fees and the fees for Berniker were for the benefit of Staff USA.

Debtor states that she deferred her salary of \$6,000 per month and \$60 per hour as a pharmacist from April 2010 to June 2012. Debtor states that in 2011 and 2012 she did not receive a salary. Debtor states that Staff USA used the premium shipping accounts of Premium Access. Debtor states that expenses characterized as "personal expenses" are not actually personal expenses and instead were expenses for the benefit of Staff USA. Debtor states that expenses for healthcare and dental were part of group employee plans. Debtor states that expenses for restaurants and travel were incurred when she was on assignments in Daly City, St. Helena, and Clearlake. FN.1.

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FN.1 Gloria Freeman's explanation does little to enhance her credibility in this or the various related proceedings. While she now states that she "deferred" her \$6,000.00 a month salary, she filed monthly operating reports in the Staff USA case in which she affirmatively stated that there were no post-petition accounts receivable owing.  
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Debtor states that Mr. Cooper was her personal attorney and received payment of \$15,000 out of her personal accounts prior to the bankruptcy filing.

#### **Chapter 11 Trustee's Supplemental Opposition**

Chapter 11 Trustee states that if the court orders Mr. Berniker or Mr. Cooper to disgorge some or all of the fees paid by Staff USA, Inc. said fees should not form the basis of a further administrative claim against the estate. Chapter 11 Trustee states that if disgorgement is ordered he does not oppose payment directly to Staff USA, Inc.

Regarding fees paid by Staff USA, Inc. to Mr. Berniker, the Chapter 11 Trustee states that if disgorgement is not ordered the court should find that the estate is not liable for administrative expenses since the services provided by Mr. Berniker did not generate a direct benefit to the estate. Chapter 11 Trustee states that recover against Mr. Freeman was obtained in separate litigation, not the litigation Mr. Berniker worked on.

Regarding fees of Austin Cooper Chapter 11 Trustee states that Mr. Cooper acknowledges that the subject fees were solely for the benefit of other entities and not for the benefit of the estate. Chapter 11 Trustee requests that the instant motion be decided in connection with the orders to show cause for Mr. Berniker and Mr. Cooper.

#### **Discussion**

At the hearing, the Staff USA Trustee stated that the request for administrative expenses was limited to the monies paid to attorneys or for legal fees of persons other than Staff USA. The Staff USA Trustee withdraws the request for allowance of an administrative expense for the benefits and reimbursements paid to Gloria Freeman.

The Trustee stated that since the filing of the Motion some additional



amounts of attorneys' fees have been identified. The court continues the hearing on this Motion to July 11, 2013, to be heard in conjunction with the Status Conferences on the Orders to Show Cause for attorneys paid by Staff USA, Inc. for services provided to Gloria Freeman. The parties to the Orders to Show Cause will identify all of the attorneys' fees at issue, which are the attorneys' fees which are the subject of this Motion.

3. [10-23577](#)-E-11 GLORIA FREEMAN  
WFH-31

CONTINUED EVIDENTIARY HEARING  
RE: ORDER TO SHOW CAUSE  
3-1-13 [[571](#)]

**No Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.  
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The Order to Show Cause was served by the Clerk of the Court on Gloria Freeman ("Debtor"), Trustee, and other parties in interest on March 4, 2013.

The court's decision is to -----
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**OCTOBER 15, 2014 HEARING**

At the hearing, ----

**OCTOBER 1, 2014 HEARING**

Robert Cameron, attorney for W. Austin Cooper, a Professional Corporation, filed with the court a notice of unavailability of W. Austin Cooper because of medical reasons. It is unknown at this time whether the medical impairment is short-term or long-term, for which a personal representative may need to be appointed for Mr. Cooper personally. W. Austin Cooper is representing himself, in *pro se*.

No Direct Testimony Statements was presented by any of the parties. Only the Plan Administrator has presented exhibits, 1-17. The time for presenting Direct Testimony States and Exhibits has closed, and has not been extended by the court due to this eve of trial stated disability and requested continuance.

The court ordered that a Status Conference will be conducted on October 15, 2014 at 9:59 a.m. to determine when the evidentiary hearing should be conducted and whether Mr. Cooper has a long term medical impairment which will require the appointment of a personal representative. If there is such impairment and the Plan Administrator cannot call Mr. Cooper as an adverse witness, the parties shall address whether there is a reasonable accommodation which can be made for Mr. Cooper to provide "hostile" testimony when called by the Plan Administrator and proper rebuttal testimony, or whether such testimony on both sides is not available.

October 15, 2014 at 10:00 a.m.

#### **JULY 11, 2013 HEARING**

The court continued the Status Conference to 10:30 a.m. on August 29, 2013.

#### **JUNE 6, 2013 HEARING**

The court ordered that a Status Conference for the instant Order to Show Cause shall be held at 10:30 a.m. on July 11, 2013. Furthermore, the court ordered that the parties shall file and serve Status conference Reports on or before June 21, 2013.

#### **MAY 16, 2013 HEARING**

The hearing was continued to 10:30 a.m. on June 6, 2013.

#### **ORDER TO SHOW CAUSE - MARCH 1, 2013**

The court issued an order to show cause on March 1, 2013. Dckt. 571. The order to show cause stated:

David Flemmer, the Chapter 11 Trustee, requested that the court issue an Order to Show Cause why attorney Austin Cooper, who represented Gloria Freeman while she was the Debtor in Possession in this case, should not be required to disgorge payments made by Staff USA, Inc. ("Staff") and by Debtor for legal services provided to Gloria Freeman, the former Debtor in Possession. In addition to representing the former Debtor in Possession, Mr. Cooper also represented Staff USA, Inc., Sunfair, LLC, and Plazaria, LLC, all related entities to the Debtor in this case.

Pursuant to 11 U.S.C. § 328 the court may deny compensation if a professional is not a disinterested person, or represents or holds an interest adverse to the interest of the estate. Mr. Cooper can only be authorized to be employed if he is disinterested. Mr. Cooper has not made this showing and instead attempted to represent the Debtor, Staff USA, Inc., Sunfair, LLC, and Plazaria, LLC.

Pursuant to 11 U.S.C. § 329 an attorney representing a debtor must file with the court a statement of the compensation paid or to be paid. The requirements of § 329 are mandatory and failure to comply forfeits any right to receive compensation. *Peugeot v. United States Trustee (In re Crayton)*, 192 B.R. 970, 981 (B.A.P. 9th Cir. Cal. 1996) (modified by *In re Thao Tran Nguyen*, 447 B.R. 268, 277 (B.A.P. 9th Cir. 2011) regarding application of American Bar Association Standards for imposing sanctions for attorney misconduct). In *Crayton* a debtor's attorney accepted payment from a debtor, did not seek employment as required by the Bankruptcy Code, and did not file a Rule 2016(b) statement, pursuant to Federal Rule of Bankruptcy Procedure 2016. The debtor's attorney refused to return the fees and the

Bankruptcy Court issued an order to show cause why fees should not be disgorged. *Id.* at 973. The Bankruptcy Appellate Panel affirmed the bankruptcy court decision ordering disgorgement of fees. *Id.*

Federal Rule of Bankruptcy Procedure 2016 implements § 329. Subsection (a) of Rule 2016 provides for compensation or reimbursement upon application. Subsection (b) requires disclosure of compensation already paid to, or agreed to be paid to, an attorney representing the debtor and applies regardless of whether the attorney applies to the court for compensation. Disclosure under Rule 2016(b) must include all payments or agreements to pay during the year preceding bankruptcy and disclosure must be precise and complete. 9 COLLIER ON BANKRUPTCY ¶ 2016 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Upon determining that an attorney has violated § 329 and Rule 2016 the court has the authority to order disgorgement of fees. *Hale v. United States Trustee (In re Basham)*, 208 B.R. 926, 930-931 (B.A.P. 9th Cir. Idaho 1997) (holding that court order disgorging fees was appropriate where debtor's counsel did not timely file disclosure of compensation statements and that the Bankruptcy Court could have ordered the disgorgement of all fees); *Crayton* at 981. When the court determines that an attorney has acted with "complete disregard" for the procedures and requirements of the Code and Rules, the court has discretion to determine whether counsel may receive any fees, regardless of the reasonableness of such fees. *Law Offices of Nicholas A. Franke v. Tiffany (In re Lewis)*, 113 F.3d 1040, 1045-1046 (9th Cir. Cal. 1997). The court's ability to order disgorgement of all fees is

grounded in the inherent authority over the debtor's attorney's compensation. The Bankruptcy Code contains a number of provisions (e.g., §§ 327, 329, 330, 331) designed to protect the debtor from the debtor's attorney. See, e.g., *In re Walters*, 868 F.2d 665, 668 (4th Cir. 1989) (noting that § 329 and Rule 2017 are designed to protect the creditors and the debtor against overreaching by attorney). As a result, several courts have recognized that the bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements of these provisions...*Matter of Prudhomme*, 43 F.3d 1000, 1003 (5th Cir. 1995) ("Additionally, the court's broad discretion in awarding and denying fees paid in connection with bankruptcy proceedings empowers the bankruptcy court to order disgorgement as a sanction to debtors' counsel for nondisclosure.")

*Lewis* at 1045. Further, the source of the payment to debtor's counsel is not relevant as the court may order disgorgement irrespective of the payment's source. *Id.*

Here, Debtor's Counsel, Mr. Cooper, is asserted to have demonstrated complete disregard for the requirements of § 329 and the procedures of Rule 2016 by failing to seek court approval for employment as Debtor's counsel in this Chapter 11 case and disclosing the compensation he did and was receiving. The Chapter 11 Trustee has provided sufficient evidence establishing that Mr. Cooper received payment for representing Debtor. Unlike the debtor in *Hale* who eventually filed a disclosure of compensation, Mr. Cooper never sought court approval and failed to disclose compensation.

As a result, the court exercises its power and discretion to order disgorgement of all fees received by Debtor or third parties in connection with Mr. Cooper's representation of Debtor in this case.

The court issues this Order to Show Cause why Austin Cooper should not be required to repay all funds received from the Debtor, Staff USA, Inc., and any source in connection with his representation of the Debtor. The Chapter 11 Trustee's motion, declaration, memorandum of points and authorities, and exhibits, Dckts. 549, 551, 552, and 560, are appended to this Order to Show Cause as Addenda 1, 2, 3, and 4, and incorporated herein by this reference.

**IT IS ORDERED** that the Motion to for Order to Show Cause is granted.

**IT IS FURTHER ORDERED** that attorney Austin Cooper shall file and serve a statement setting forth the information required by Federal Rule of Bankruptcy Procedure 2016(a) on or before April 1, 2013.

**IT IS FURTHER ORDERED** that attorney Austin Cooper is to file and serve a response on or before April 1, 2013, to this Order to Show Cause why Austin Cooper should not be required to disgorge \$20,000.00 or such other amount established at the hearing for all payments made to him by Staff USA, Inc. or other sources for representation of Gloria Freeman, the former Debtor in Possession in this case. The grounds for disgorgement are as set forth in this Order to Show Cause, including the Motion, Declaration, Points and Authorities, and Exhibits for the issuance of this Order to Show Cause, Dckts. 549, 551, 552, and 560, copies of which are appended hereto as Addenda 1, 2, 3, and 4.

**IT IS FURTHER ORDERED** that attorney Austin Cooper is to file and serve a response on or before April 1, 2013 to the Order to Show Cause why Austin Cooper should not be required to return the \$15,000.00 retainer disclosed in Debtor's Disclosure of Compensation of Attorney for Debtors form filed March 1, 2010 and all other payments disclosed on the statement or received relating to representation of Gloria Freeman, the former Debtor in Possession.

**IT IS FURTHER ORDERED** that on or before April 15, 2013, the Chapter 11 Trustee, the U.S. Trustee, and any other party in interest shall file and serve a Reply, if any, to Mr. Cooper's Response to the Order to Show Cause.

**IT IS FURTHER ORDERED** that the hearing on Order to Show Cause shall be conducted at 10:30 a.m. on May 16, 2013.

#### **FEBRUARY 28, 2013 HEARING**

Trustee David Flemmer seeks an order to show why attorney Austin Cooper should not be required to disgorge payments made by Staff USA, Inc. ("Staff") and by Debtor for legal services provided to Gloria Freeman, the former Debtor in Possession and currently the Debtor.

#### **Background**

Trustee states that at the time Debtor commenced the instant chapter 11 case on February 16, 2010 Debtor was the 50% shareholder or member in a number of corporations and limited liability companies including Staff. Trustee states Debtor was also in the middle of divorce proceedings involving her former spouse, Larry Freeman. Trustee states attorney Austin Cooper represented Debtor in her chapter 11 case even though the court never approved Mr. Cooper's employment. Trustee states that Debtor's Disclosure of Compensation of Attorney for Debtors form indicated that Mr. Cooper was paid \$15,000 on February 15, 2010, one day before the chapter 11 filing.

#### **Sunfair, LLC**

Trustee states that on June 4, 2010 Debtor cause her wholly owned limited liability company, Sunfair, LLC, to commence a chapter 11 case. Trustee states that Mr. Cooper represented Sunfair, LLC, receiving a retainer of \$2,461, even though the court never approved his employment. Trustee states that Staff paid for the retainer.

#### **Plazaria, LLC**

Trustee states that on June 4, 2010 Debtor caused her wholly owned limited liability company Plazaria, LLC to commence a chapter 11 case. Trustee states that Mr. Cooper represented Plazaria, LLC, receiving a retainer of \$2,461, even though the court never approved his employment. Trustee states that Staff paid for the retainer.

Trustee states that on January 4, 2011 he was appointed Trustee and engaged in negotiations with Larry Freeman until May 2011 at which point Mr. Freeman retained new counsel. Trustee states that on August 31, 2011 Trustee commenced an adversary proceeding against Mr. Freeman.

#### **Staff**

Trustee states that on September 1, 2011 Staff filed a chapter 11 petition and that Mr. Cooper represented Staff even though the court never approved his employment. Trustee states that on May 29, 2012 the court appointed Jon Tesar as the chapter 11 trustee in the Staff bankruptcy case.

### ***Flemmer v. Freeman Adversary Proceeding***

Trustee states that during the adversary proceeding Mr. Freeman's counsel passed away and Mr. Freeman retained a third attorney. Trustee states a settlement was reached and approved on July 19, 2012. Trustee states that Mr. Freeman recently received an undisclosed refund from the IRS in the amount of \$130,000, which Trustee contends is property of the bankruptcy estate.

### ***Freeman v. Flemmer Adversary Proceeding***

Trustee states that Mr. Freeman commenced an adversary proceeding against Trustee seeking declaratory relief regarding ownership of the tax refund. Trustee states Mr. Cooper represents Mr. Freeman in the adversary proceeding.

Trustee states that on November 30, 2012 Jon Tesar, trustee for Staff, filed a motion in the instant case for seeking allowance of administrative claims. Trustee states that he supports a portion of the claim and alleges that Staff made five payments of \$5,000 to Mr. Cooper after the instant bankruptcy was filed on February 16, 2010. Trustee states that Jon Tesar argues that payments to Mr. Cooper by Staff were actually dividends to Debtor and that Debtor later used these dividends to pay Mr. Cooper.

### ***Relief Requested***

Trustee states that at issue is whether Mr. Cooper should retain payments made by Staff to Mr. Cooper. Trustee requests that the court issue an order to show cause to afford Mr. Cooper an opportunity to explain the background of payments made to him. Specifically Trustee asks that the court (I) issue an order to show cause why Mr. Cooper should not be required to disgorge payments received directly or indirectly from Debtor or Staff and (ii) issue an order requiring Mr. Cooper to file a current statement setting forth all of the information required by Federal Rule of Bankruptcy Procedure 2016.

First, Trustee argues that if Mr. Cooper received payment from Staff that was made for the benefit of Debtor the payments should be reimbursed by the Freeman Estate. Jon Tesar, in his motion for allowance of administrative expenses, seeks between \$15,000 and \$20,000 in payments from Staff. Trustee states that if Jon Tesar is correct the court should require Mr. Cooper to return the funds to the Freeman Estate so that payments can be returned to Staff. Trustee states that the basis for payments to Mr. Cooper is crucial to determining whether Jon Tesar's request for administrative expenses can be granted and that the court must determine whether the payments to Mr. Cooper were for legal services provided to Debtor.

However, Trustee argues that if the payments were property of the Freeman Estate Mr. Cooper is not entitled to retain such payments without court approval of his appointment pursuant to 11 U.S.C. § 327 and approval of compensation pursuant to 11 U.S.C. § 330. Trustee states that to date Mr. Cooper has not sought court approval for his employment and suggests that the court establish a deadline for seeking such approval.

Trustee states that in the event Mr. Cooper cannot obtain court approval for his employment the court should order disgorgement of Mr. Cooper's fees and all amounts paid from property of the Freeman Estate. Trustee states

that even if Mr. Cooper is able to establish that the challenged payments did not come from property of the Freeman Estate Jon Tesar may have other avenues to recover payments, including §§ 329, 548, or Federal Rule of Bankruptcy Procedure 2017.

Second, Trustee argues that Mr. Cooper must seek court review of the \$15,000 retainer he received. Trustee states that this sum is subject to court review pursuant to § 329 to the extent that the retainer was used to pay pre-petition attorney fees. Trustee states that he does not know whether the \$15,000 retainer was the only amount paid to Mr. Cooper in connection with this case and requests an order requiring Mr. Cooper to file a supplemental statement setting for the information required by Rule 2016(a).

Federal Rule of Bankruptcy Procedure 2016(a) provides for compensation or reimbursement upon application. Subsection (b) provides information relevant to allowance of fees to professionals under 11 U.S.C. § 329. The attorney (or any professional to be hired by the debtor in possession or trustee) is required to disclose compensation already paid to, or agreed to be paid to, an attorney representing the debtor and applies regardless of whether the attorney applies for compensation. Disclosure under Rule 2016(b) must include all payments or agreements to pay during the year preceding bankruptcy and disclosure must be precise and complete. 9 Collier on Bankruptcy ¶ 2016 (Alan N. Resnick & Henry J. Sommer eds. 16<sup>th</sup> ed.). The disclosure must be supplemented for additional monies received.

The court finds that issuance of an order to show cause is necessary to determine whether amounts paid from the Staff Estate to counsel for the former Debtor in Possession and the \$15,000.00 disclosed retainer must be disgorged. The grounds for disgorgement include failing to be authorized as counsel for the former Debtor in Possession and failure to comply with Federal Rule of Bankruptcy Procedure 2016, failing to obtain authorization to be employed as counsel for Debtor in Possession, and failing to obtain authorization to be paid fees for such representation.

4. [14-23800](#)-E-13 TROY/KIMBERLY JEPSEN  
DPC-2 Mark Briden

MOTION TO DISMISS CASE  
9-17-14 [[49](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to continue the Motion to Dismiss to 3:00 p.m. on November 18, 2014.</b>
---

David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss on September 17, 2014. Dckt. 49. The Trustee moved to dismiss on the basis that his Objection to Confirmation was sustained at the hearing on July 22, 2014. Since that time, Troy and Kimberly Jepsen ("Debtors") have not filed an amended plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

#### **DEBTORS' OPPOSITION**

On September 25, 2014, Debtors filed an opposition to this Motion. Dckt. 60. Debtors state that they filed a First Amended Chapter 13 Plan on September 24, 2014 and set it for hearing on November 18, 2014. Debtors also state that they are current under the Plan's terms.

#### **DISCUSSION**

The court's review of the docket shows that Debtor did file a new plan and a motion to confirm a plan on September 24, 2014. Dckt. 54, 56.

The court has reviewed the Motion to Confirm the Modified Plan and the



Declaration in support filed by the Debtors. Dckt. 54, 57. The Motion does not appear to comply with Federal Rule of Bankruptcy Procedure 9013 which requires that the Motion state with particularity the grounds upon which the requested relief is based. It appears the motion to confirm merely states that an amended plan has been filed, so the court should confirm the amended plan.

The hearing on the "motion" to confirm the amended plan is scheduled for November 18, 2014, at 3:00 p.m. This affords Debtors the opportunity to file a supplement to the motion to confirm which shall state with particularity the grounds upon which the relief is properly requested. If the supplement is filed on or before October 30, 2014, the court will consider it as part of the motion to confirm.

The Declaration in support of confirmation appears to provide some testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The hearing on the Motion to Dismiss is continued to 3:00 p.m. on November 18, 2014.

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

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

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

**IT IS ORDERED** that the hearing for the Motion to Dismiss is continued to 3:00 p.m. on November 18, 2014.

5. [14-28101](#)-E-13 SHERRI ARNOLD  
DPC-2 James Andrews

MOTION TO DISMISS CASE  
9-19-14 [[32](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 19, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, seeks dismissal of the case on the basis that Sherri Arnold ("Debtor") did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee further alleges that the Debtor is \$956.27 delinquent in plan payments, which represents one month of the \$956.27 plan payment. The next scheduled payment was due September 25, 2014. 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, the 2013 tax year. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed an opposition to this Motion. A review of the docket for this case shows that neither Debtor's pay advices nor tax returns have been filed.

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. [12-33903](#)-E-13 JOHN MOORE  
DPC-1 Scott Sagaria

MOTION TO DISMISS CASE  
9-17-14 [[49](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed a Motion to Dismiss this case on September 17, 2014. Dckt. 49. The Trustee seeks to dismiss the case on the basis that John Moore ("Debtor") is in material default of his Plan. Debtor's confirmed Plan includes a Monthly Contract Installment Amount of \$1,030.00 in Class 1. The amount was changed to \$1,271.48 in January 2014 per the November 19, 2013 Notice of Mortgage Payment Change filed by creditor Wells Fargo Bank, N.A. The creditor has filed another Notice of Mortgage Payment Change on August 13, 2014, which will increase the installment amount to \$1,511.29 in September 2014. Debtor's current monthly plan payment of \$1,566.00 is not sufficient to pay the monthly contract installment amount, the Class 1 arrearage dividend, and the attorney and trustee fees dividends.

#### **DEBTOR'S OPPOSITION**

Debtor filed an opposition to this Motion on September 29, 2014. Dckt. 53. Debtor states that Wells Fargo Bank, N.A. filed an amended Proof of Claim on August 28, 2014 which lowered the amount of pre-petition arrears on the mortgage. Wells Fargo Bank, N.A. has also filed two Notice of Mortgage Payment Changes, the most recent filed on August 13, 2014 to take effect September 1,

2014. Debtor is paying his mortgage through Class 1 of his confirmed Plan. The increase in mortgage amount requires a modified plan to be filed and set for hearing. Debtor states that he and his counsel have prepared a First Modified Chapter 13 Plan and anticipate that it will be filed before the hearing on this Motion.

#### **DISCUSSION**

The court has reviewed the docket for this case. At this time, no Modified Plan has been filed. Without a modified plan, the Debtor remains in default of his confirmed plan. Defaulting on a Chapter 13 Plan is grounds for dismissal. 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

7. [13-22105-E-13](#) CHYREL FLAHERTY  
DPC-1 C. Anthony Hughes

MOTION TO DISMISS CASE  
9-17-14 [[24](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Chyrel Flaherty ("Debtor") is \$7,545.00 delinquent in plan payments, which represents multiple months of the \$2,410.00 plan payment. Another payment of \$2,410.00 was due September 25, 2014. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Additionally, the Trustee asserts that Debtor's Class 1 mortgage creditor filed a Notice of Mortgage Payment Change that increases the Monthly Contract Installment Amount from \$1,185.86 to \$1,968.86 in September 2014. Because Debtor's Plan calls for monthly dividends of \$959.11 to secured creditors, the plan payments will not be sufficient, putting Debtor in default of the terms of the Plan. 11 U.S.C. § 1307(c)(6).

Debtor has not filed opposition to the instant 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.

8. [14-28406-E-13](#) MONA PROTZEL  
Pro se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-23-14 [[23](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Mona Protzel ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on October 1, 2014. The court computes that 14 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on September 29, 2014 (Dckt. 25), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

9.     10-25007-E-13     JEFFERY/JUANITA SCHAFF                     MOTION TO DISMISS CASE  
DPC-3                     Raymond Burton                     8-29-14 [145]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 29, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Jeffery and Juanita Schaff ("Debtors") are \$2,370.00 delinquent in plan payments, which represents multiple months of the \$790.00 plan payment. Another payment of \$790.00 will come due before the hearing date for this Motion. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed any opposition to this 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.

10. [13-23207](#)-E-13 VINCENT/LEAH VEDELLA MOTION TO DISMISS CASE  
DPC-1 Mary Ellen Terranella 9-17-14 [[28](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. Dckt. 28. The Trustee seeks to dismiss the case on the basis that Vincent and Leah Vedella ("Debtors") are in material default of the terms of their Plan because their Plan will not complete within 60 months. The Trustee's calculations show that the Plan will complete in 67 months, not the 60 months proposed. Additionally, the Class 1 arrears claim is \$1,523.00 greater than scheduled and the Class 1 Monthly Contract Installment amount has increased by \$38.20.

#### **DEBTORS' OPPOSITION**

Debtors filed an opposition to this Motion on October 1, 2014. Dckt. 32. Debtors state that they believe they can increase their monthly plan payments by \$75.00. This would cover the increased mortgage payment and arrears claim. Debtors propose to increase their monthly payment from \$2,114.00 to 2,189.00 per month, beginning with the October 2014 payment. Debtors will file

a modified plan and related motion if the court so requires.

#### **DISCUSSION**

The current Plan is in default due to the higher mortgage arrears claim and mortgage payment increase, causing the Plan to complete in 67 months and not the maximum 60 months. Without a modified plan that addresses the increased mortgage payments, the plan default is grounds for dismissal. 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

11. [13-34907-E-13](#) VICTORIA VALENTE  
DPC-1 Lucas Garcia

CONTINUED MOTION TO DISMISS  
CASE  
8-8-14 [[67](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,934.00 delinquent in plan payments, which represents multiple months of the \$3,973.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

On August 25, 2014, Debtor has filed opposition to this Motion. Dckt. 72. Counsel for Debtor has attempted to contact Debtor several times without success. Counsel for Debtor requests a 30-day continuance to continue efforts to contact Debtor and address the delinquent payments.

On September 5, 2014, Debtor filed a supplemental response to the instant Motion stating that Debtor will make the payment of \$11,925.00 to the Trustee on September 5, 2014 by 12:00 p.m. Debtor further states that she and her counsel will be present at the September 10, 2014 hearing on the instant motion.

## **SEPTEMBER 10, 2014 HEARING**

At the September 10, 2014 hearing, Debtor testified that she borrowed money to make her payments from family members, including her husband. Debtor did not previously disclose that she was married. Debtor also stated that she used her plan payment money to cover funeral costs, with no explanation of why no other family members could contribute.

The court continued the hearing to allow the Chapter 13 Trustee and the U.S. Trustee to investigate the case and determine the proper resolution for this case: continued prosecution by Debtor, conversion to Chapter 7, dismissal, or dismissal with prejudice. This also gives Debtor time to clearly and accurately state disclose her financial information and that of her husband.

## **DEBTOR'S COUNSEL'S RESPONSE**

Debtor's Counsel, Lucas Garcia, filed a response to the Motion on September 30, 2014. Dckt. 101. Debtor's counsel had requested that Debtor provide, by September 23, 2014: (1) a narrative that would form the basis of a declaration; (2) a separate declaration from Debtor's spouse regarding his perception of their separation; (3) bills from each spouse's home from before the date of filing to present; and (4) three months of Debtor's bank statements. Debtor's Counsel has received no communication from Debtor to date.

## **DISCUSSION**

The Debtor has not shown that has become current on her plan payments and is able to make the required plan payments. Rather, she has shown that it was necessary to borrow money to make the plan payments. Additionally, rather than make plan payments, monies were disbursed by Debtor for the benefit of other persons. Without evidence showing that Debtor has and is able to make her plan payments, the court dismisses the case.

Cause continues to exist 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.

12. [10-39709](#)-E-13 THEODORE MUELLER  
DPC-8 Scott Hughes

MOTION TO DISMISS CASE  
9-17-14 [[49](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Theodore Mueller ("Debtor") is \$2,440.00 delinquent in plan payments, which represents multiple months of the \$660.00 plan payment. By the hearing date, another monthly payment of \$660.00 will be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed opposition to this 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.

13. [12-23611](#)-E-13 GARTH GOSELIN  
DPC-1 Seth Hanson

MOTION TO DISMISS CASE  
8-29-14 [[35](#)]

**Final Ruling:** No appearance at the October 25, 2014 hearing is required.  
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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 29, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Garth Goselin ("Debtor") is \$2,355.00 delinquent in plan payments, which represents multiple months of the \$785.00 plan payment. By the hearing date, another monthly payment of \$785.00 will be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not filed an opposition to this 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.

14.    [09-41712](#)-E-13    **TERRENCE/KRYSTA MURPHY**                      **MOTION TO DISMISS CASE**  
         **DPC-8**                      **Scott CoBen**                      **9-17-14 [[73](#)]**

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

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

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

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

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

15. [14-27015](#)-E-13 MARY BURKE  
DPC-2 Peter Macaluso

MOTION TO DISMISS CASE  
9-17-14 [[27](#)]

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(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 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. Dckt. 27. The Trustee seeks to dismiss this case on the basis that:

1. Mary Burke ("Debtor") is \$1,870.00 delinquent in plan payments. The next scheduled payment of \$1,870.00 is due on September 25, 2014. The Debtor has paid \$0.00 into the plan to date.
2. Debtor has failed to file an amended plan and set it for confirmation since the Trustee's Objection to Confirmation was sustained by the court on September 9, 2014. Dckt. 26.

#### **DEBTOR'S OPPOSITION**

Debtor has filed an opposition to this Motion on September 30, 2014. Dckt. 34. Debtor states that she will file, set and serve an amended plan prior to the hearing on this motion. Debtor also states that Debtor will be current on plan payments.

#### **DISCUSSION**



The Trustee seeks alleges that the Debtor is \$1,870.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtor's assurance that the plan will be current by the hearing date is not enough to cure this delay.

The Trustee's Motion further argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 9, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor promises to file an amended plan before the hearing, but offers no explanation for the delay in setting the Plan for confirmation. This also is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Again, Debtor's promises are not enough to cure this defect.

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.	<a href="#"><u>13-24322-E-13</u></a>	ALEX LICHINE	MOTION TO DISMISS CASE
	DPC-1	Kristy Hernandez	9-17-14 [ <a href="#"><u>33</u></a> ]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.

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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.**

17. [14-26329](#)-E-13 HATTIE FERRETTI  
DPC-1 Lucas Garcia

MOTION TO DISMISS CASE  
8-25-14 [[17](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

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

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

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

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

18. [13-23841](#)-E-13 PATRICK PADILLA  
DPC-1 Richard Chan

MOTION TO DISMISS CASE  
9-17-14 [[28](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. The Trustee seeks to dismiss the case because Patrick Padilla ("Debtor") is in material default of his plan. Debtor failed to provide for the priority claim of the Franchise Tax Board in the amount of \$770.81. Claim No. 8-1. This is a breach of section 2.13 of Debtor's plan. Debtor received a Notice of Filed Claims on October 25, 2013, which listed this claim and noted that it was priority and not provided for in the plan.

Debtor has not filed any opposition to this Motion.

Because Debtor has failed to provide for the Franchise Tax Board's priority claim, he is in default of the terms of his Plan. This is cause for dismissal under 11 U.S.C. § 1307(c)(7). 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.

19. [14-28141](#)-E-13 ELIZABETH SPEARS

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-15-14 [[16](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Elizabeth Spears ("Debtor"), Debtors' Counsel, and Trustee as stated on the Certificate of Service on September 17, 2014. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 10, 2014).

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

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

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

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

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

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

20. [09-45945](#)-E-13 THOMAS HARDER  
DPC-1 Robert Goldstein

MOTION TO DISMISS CASE  
8-29-14 [[91](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**

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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 29, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on November 12, 2014.</b>
---

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on August 29, 2014. Dckt. 91. The Trustee alleges that Thomas Harder ("Debtor") is \$630.00 delinquent in plan payments. Before the hearing date, another monthly payment of \$210.00 will come due.

#### **DEBTOR'S RESPONSE**

Debtor filed a response to the Trustee's Motion on October 1, 2014. Dckt. 95. Debtor is in month 59 of his Chapter 13 Plan and has kept current on payments until recently, when Debtor lost his job in March 2014. Debtor has since found employment at roughly the same pay as his prior job and anticipates bringing his plan current on or before October 15, 2014. If Debtor is unable to do so by the date of the hearing, he will file a Motion to Modify or propose an agreement with the Trustee's office to catch up on the remainder of his payments at the time Debtor reaches the 60<sup>th</sup> month of his Plan.

#### **DISCUSSION**

The Trustee seeks dismissal of the case on the basis that the Debtor is at least \$630.00 delinquent in plan payments, which represents multiple months of the \$210.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has explained his situation in his response. In light of the Debtor's prior performance and the limited number of payments remaining, the court continues the hearing.

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

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

October 15, 2014 at 10:00 a.m.

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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 10:00 a.m. on November 12, 2014.

21. [14-25647](#)-E-13 BARRY MCGWIRE  
Pro se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-2-14 [[31](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Barry McGwire ("Debtor") as stated on the Certificate of Service on September 4, 2014. The court computes that 41 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on September 18, 2014 (Dckt. 44), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

22. [14-27351](#)-E-13 DAVID/JANNAVIE HICKMAN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-22-14 [[23](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on David and Jannavie Hickman ("Debtors"), Debtors' Counsel, and Trustee as stated on the Certificate of Service on September 24, 2014. The court computes that 21 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 15, 2014).

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

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

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

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

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

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

23. [14-23554-E-13](#) PAULA CAMPBELL  
DPC-2 David Foyil

MOTION TO DISMISS CASE  
9-17-14 [[48](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The court's decision is to deny the Motion to Dismiss.**

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. Dckt. 48. The Trustee alleges that after the Trustee's Objection to Confirmation was sustained on June 24, 2014, Paula Campbell ("Debtor") has not filed an amended plan and set it for confirmation.

#### **DEBTOR'S OPPOSITION**

Debtor filed opposition to this Motion on September 30, 2014. Dckt. 59. The Debtor states that she could not confirm her Chapter 13 plan until the Debtor's Motion to Value the collateral of Citi Financial is granted. The Motion to Value was filed on June 19, 2014 and granted on August 5, 2014. Debtor states that she filed a First Amended Chapter 13 Plan concurrently with this Motion.

#### **DISCUSSION**

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 24, 2014. A review of the docket shows that Debtor has filed a new plan and a motion to confirm a plan on September 30, 2014. Dckt. 52, 55.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 52, 54. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

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

October 15, 2014 at 10:00 a.m.

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

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

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

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

24. [14-29154](#)-E-13 GARY/CHERYL PETERSEN

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-25-14 [[19](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Gary and Cheryl Petersen ("Debtors"), Debtors' Counsel, and Trustee as stated on the Certificate of Service on September 27, 2014. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on September 11, 2014).

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

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

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

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

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

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

October 15, 2014 at 10:00 a.m.

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25. [12-28856-E-13](#) KEVIN/BRANDEE MCCANN  
DPC-2 David Foyil

MOTION TO DISMISS CASE  
9-17-14 [[100](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014 By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, seeks dismissal of the case on the basis that the Debtor is \$1,376.00 delinquent in plan payments, which represents multiple months of the \$406.00 plan payment. Dckt. 100. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed any opposition to this 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.

26. [14-27557](#)-E-13 DOUGLAS HAYCOCK  
DPC-2 W. Steven Shumway

MOTION TO DISMISS CASE  
9-4-14 [[26](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 4, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is denied as moot, the court having dismissed the case.</b>
--

David Cusick, the Chapter 13 Trustee, first argues that Douglas Haycock ("Debtor") did not commence making plan payments and is \$805.00 delinquent in plan payments, which represents multiple months of the \$805.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Because this is Debtor's fifth bankruptcy case in two years, Debtor should have known that attendance is required. 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).

Additionally, the Trustee asserts that Debtor has filed four Chapter 13 cases in the past two years on the following dates: October 9, 2012 (dismissed January 10, 2013), January 11, 2013 (dismissed April 4, 2013), April 8, 2013 (dismissed September 13, 2013), and November 25, 2013 (dismissed May 17, 2014). Debtor's current case was filed July 24, 2014. The Trustee further alleges that Debtor has failed to provide business documents supporting his employment as a "Self-Research Consultant." This supports a presumption of bad faith on the part of the Debtor in his prosecution of this case.

Debtor has not filed any opposition to this Motion.

The Debtor's failure to commence plan payments and appear at the Meeting of Creditors are grounds to dismiss this case. The presumption of bad faith from Debtor's multiple filings and failure to provide documents further show that cause exists to dismiss this case.

On October 7, 2014, the court filed an order dismissing this case pursuant to the motion of the Debtor. Dckt. 39. This renders the Trustee's motion 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 the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, the court having previously entered an order dismissing this case, 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 as being moot.

27. [13-21559](#)-E-13 EARL MILLER  
DPC-1 Timothy Walsh

CONTINUED NOTICE OF DEFAULT AND  
APPLICATION TO DISMISS CASE  
6-16-14 [[22](#)]

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

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

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

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

Correct Notice Provided. The BNC Certificate accompanying the Notice of Default and Application to Dismiss states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

<p>The court's decision is to grant the Motion to Dismiss and dismiss the case.</p>
---

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,825.00 delinquent in plan payments, which represents one month of the \$6,825.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**DEBTOR'S OPPOSITION**

Counsel for Debtor requests a hearing to oppose Trustee's Notice of Default and Application to Dismiss. Counsel states that Debtor has suffered from a stroke and was admitted to the Kaiser Foundation Rehabilitation Center from May 22, 2014 through May 30, 2014. Counsel for Debtor states that the Center provided a letter that Debtor will be unable to return to work for at least three months and needs supervision and assistance with his daily living activities. Debtor states he is attempting to withdraw funds from his retirement to catch up on the plan payments.

#### **TRUSTEE'S RESPONSE**

Trustee responds stating:

1) A Notice of Default and Application to Dismiss (DPC-1) (Docket #22) was filed and served on June 17, 2014 for a delinquency of \$6,825. An additional payment of \$6,825 was due on June 25, 2014, with a total of \$13,650 due within 30 days from the date of the service of the notice.

2) On June 25, 2014, the Debtor filed an opposition (Docket #24) to the Notice of Default and Application to Dismiss, and has not filed a modified plan seeking to change the plan.

3) Debtor suffered a stroke and was admitted into the Kaiser Foundation Rehabilitation Center from May 22, 2014 through May 30, 2014. He is diagnosed not to return to work for at least 3 months.

4) The Debtor does not dispute that his plan has fallen delinquent.

The Debtor seeks to prevent the motion to dismiss but does not proceed with a motion to modify. The Debtor has not cured the default, does not dispute the default, and is not attempting to modify their plan.

#### **JULY 9, 2014 HEARING**

The court continued the hearing on this Motion to 10:00 a.m. on October 15, 2014 to allow Debtor to continue his attempts to get a disbursement from his deferred compensation and disability.

#### **DISCUSSION**

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

28. [14-28162-E-13](#) DEMETRIUS HARDSON  
Mikalalah R. Liviakis

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-15-14 [[16](#)]

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

-----

The Order to Show Cause was served by the Clerk of the Court on Demetrius Hardson ("Debtor"), Debtor's Counsel, and Trustee as stated on the Certificate of Service on September 17, 2014. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 10, 2014).

<p><b>The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.</b></p>
--

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$77.00].

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

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

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

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

29. [10-44663](#)-E-13 MARY MANNER  
DPC-6 Al Patrick

MOTION TO DISMISS CASE  
9-17-14 [[72](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

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

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

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

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

30. [14-27264](#)-E-13 DENNIS JACOPETTI  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-18-14 [[32](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

The Order to Show Cause was served by the Clerk of the Court on Dennis Jacopetti ("Debtor"), Debtor Counsel, and Trustee as stated on the Certificate of Service on September 20, 2014. The court computes that 25 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$54.00 due on September 15, 2014).

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



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

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

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

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

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

31. [10-25465](#)-E-13 LUCILLE/ALEXANDER CARIGMA MOTION TO DISMISS CASE  
NLE-1 John Harrison 9-15-14 [[60](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to granted the Motion to Dismiss and dismiss the case.</b>
---

Trustee seeks dismissal on the grounds that the Debtor has failed to file a Statement Noting a Party's Death and that Debtor has not taken any action pursuant to Fed. R. Bankr. P. 1016, 7025, and 9014 to file a suggestion of death and a motion to substitute parties. Additionally, the Trustee alleges that Trustee has not received information concerning life insurance proceeds, distributions of retirement benefits, or payment of debts through credit insurance.

Debtor's wife and co-debtor, Lucille Carigma, passed away in January 2014. Debtor Alexander Carigma filed a reply to Trustee's Motion to Dismiss stating that his previous attorney retired due to health concerns and that he has hired a new attorney to cure the deficiencies in the Debtor's case. Dckt. 65. Debtor states that all of the defects highlighted by the Trustee in his motion will be cured at the time of hearing.

A review of the docket shows that no Statement Noting a Party's Death nor a motion to substitute parties have been filed.

Because the deficiencies have not been cured, 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. [12-32067-E-13](#) TERRY ONEAL  
DPC-4 Aaron Koenig

MOTION TO DISMISS CASE  
9-17-14 [[72](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

33. [14-26368-E-7](#) JAMES HAYES  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-22-14 [[64](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

The case having previously been converted to a Chapter 7, the Order is discharged as moot.

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

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

The Order to Show Cause having been presented to the court, the case having been previously converted to a Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order is discharged as moot, the case having been converted to a Chapter 7.

34. [14-26368-E-7](#) JAMES HAYES  
DPC-1 Pro Se

MOTION TO DISMISS CASE  
9-10-14 [[60](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
-----

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

35. [13-23276-E-13](#) LIE/APRIL TONOUKOUIN  
DPC-1 James Keenan

MOTION TO DISMISS CASE  
9-17-14 [[24](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,194.01 delinquent in plan payments, which represents multiple months of the \$1,200.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Furthermore the Trustee argues that the Plan will be completed in 82 months as opposed to 60 months proposes, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Trustee also states that the Class 1 mortgage arrears claim was \$11,173.99 greater than scheduled.

Debtors filed an opposition to the Motion to Dismiss on September 29, 2014. Dckt. 28. Debtors argue that they will be current with their plan payments prior to the hearing and will modify their plan to provide for the correct arrearage amount on their home or, alternatively, object to the mortgage arrearage claim.

A review of the docket shows that the Debtors have not filed any modified plans nor has the default been cured.

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

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

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

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

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

36. [14-25376](#)-E-13 KEVIN/BREE SEARS MOTION TO DISMISS CASE  
DPC-2 Douglas Jacobs 9-17-14 [[65](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**

-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

<b>The court's decision is to continue the Motion to Dismiss to 3:00 p.m. on November 18, 2014 to be heard in conjunction with Creditor Cory Adams' Motion to Dismiss.</b>
--

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on September 17, 2014. Dckt. 65.

#### **MOTION**

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 19, 2014. 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).

October 15, 2014 at 10:00 a.m.

## **DEBTORS' REPLY**

Debtors filed a reply to Trustee's instant motion on September 29, 2014. Dckt. 77. Debtors state that a First Amended Plan and Motion to Confirm was filed on September 23, 2014 and set for confirmation hearing on November 25, 2014. Debtors state that the reason for the delay in filing a plan was due by the continuing uncertainty and variance of the Debtors' income and expenses. The Debtors argue that the recently filed amended plan explains any discrepancies in accounting and provides accurate information to answer the Trustee's and the court's concerns.

## **DISCUSSION**

Because there is a pending Motion to Dismiss filed by Creditor Cory Adams set for a continued hearing at 3:00 p.m on November 18, 2014 (Dckt. 82), the court continues the Trustee's instant Motion to Dismiss to 3:00 p.m. on November 18, 2014 to be heard in conjunction with Creditor Cory Adams' motion.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is continued to 3:00 p.m. on November 18, 2104.

37. [14-24678](#)-E-13 LYDIA MANLANGIT  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-4-14 [[37](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Lydia Manlangit ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 6, 2014. The court computes that 39 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

<b>The Order to Show Cause is discharged as moot.</b>
---

The court having dismissed this bankruptcy case by prior order filed on September 18, 2014 (Dckt. 44), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

38. [14-26780](#)-E-13 MICHAEL FLEMONS  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-3-14 [[31](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Michael Flemons ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 5, 2014. The court computes that 40 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on September 18, 2014 (Dckt. 40), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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



39. [14-27984-E-13](#) ROSE RODRIGUEZ  
Dale Orthner

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-9-14 [[16](#)]

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

-----

The Order to Show Cause was served by the Clerk of the Court on John McCall ("Debtor") and Trustee on September 14, 2014. The court computes that 69 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 6, 2014).

<p><b>The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.</b></p>
--

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$77.00].

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

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

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

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

40. [14-27984-E-13](#) ROSE RODRIGUEZ  
DPC-2 Dale Orthner

MOTION TO DISMISS CASE  
9-30-14 [[22](#)]

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

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

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

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

Correct Notice Provided. The 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 30, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
---

#### **FAILED TO COMMENCE PLAN PAYMENTS**

The Trustee argues that the Debtor did not commence making plan payments and is \$5,056.72 delinquent in plan payments, with an additional \$5,056.72 coming due on October 25, 2014. The Plan in §1.01 calls for payments to be received by the Trustee no later than the 25th day of each month. 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.

#### **FAILED TO APPEAR AT 341 MEETING**

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held on September 4, 2014, 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).

#### **FAILURE TO PROVIDE TAX RETURNS**

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).

#### **FAILURE TO PROVIDE EVIDENCE**

Schedule I in part calls for a monthly contribution from "wife's aunt" in the amount of \$1,200.00 on line 8h. Dckt.1 pg.24. No evidence that Debtor is receiving the room rental income has been provided to the Trustee.

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

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

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

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

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

41. [14-25986](#)-E-13 TRUDY KUTZ  
Stanley Berman

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-8-14 [[43](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Trudy Kutz ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 10, 2014. The court computes that 35 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on September 18, 2014 (Dckt. 51), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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

42. [14-27090](#)-E-13 JOHN MCCALL  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-12-14 [[32](#)]

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

-----

The Order to Show Cause was served by the Clerk of the Court on John McCall ("Debtor") and Trustee as stated on the Certificate of Service on September 14, 2014. The court computes that 31 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 8, 2014).

<p><b>The court's decision is to sustain the Order to Show Cause and order the case dismissed.</b></p>
--

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: [\$77.00].

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

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

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

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

43. [14-27090-E-13](#) JOHN MCCALL  
DPC-1 Pro Se

MOTION TO DISMISS CASE  
9-4-14 [[26](#)]

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - 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, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered.

<b>The Motion to Dismiss is granted and the case is dismissed.</b>
--

#### **FAILED TO COMMENCE PAYMENT PLANS**

The Trustee argues that the Debtor did not commence making plan payments and is \$50.00 delinquent in plan payments, with another payment coming due on September 25, 2014. The Plan in §1.01 calls for payments to be received by the Trustee no later than the 25th day of each month. 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.

#### **NEVER NOTICED INITIAL PLAN**

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 on August 5, 2014 after the notice of the Meeting of Creditors

October 15, 2014 at 10:00 a.m.

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was issued. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors unless the court determines it should be held sooner, 11 U.S.C. § 1324. 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).

#### **FAILED TO APPEAR AT 341 MEETING**

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors on August 28, 2014, 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).

#### **FAILURE TO PROVIDE TAX RETURNS**

The Debtor has not provided the Trustee with 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 required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I). Failure to provide tax returns is an unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **INCORRECT USE OF STANDARD CHAPTER 13 PLAN FORM**

The Debtor has not correctly utilized the Chapter 13 Plan standard form. Local Rule 3015-1(a) states that the mandatory form plan, EDC 3-080, shall be utilized as the standard form. According to the Court's website ([www.caeb.uscourts.gov](http://www.caeb.uscourts.gov)), form EDC 3-080-12 is effective May 1, 2012. The Debtor filed an incorrect plan. Dckt.19.

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. [14-26094](#)-E-13 SHEILA GARCIA  
Marc Caraska

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-12-14 [[45](#)]

**Final Ruling: No appearance at the October 15, 2014 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Sheila Garcia ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on September 14, 2014. The court computes that 31 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay fees.

**The Order to Show Cause is discharged as moot.**

The court having dismissed this bankruptcy case by prior order filed on September 18, 2014 (Dckt. 57), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

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

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

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



45. [14-27096-E-13](#) LAURA RUBY  
DPC-2 Bruce Dwiggin

MOTION TO DISMISS CASE  
9-19-14 [[26](#)]

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

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

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

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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 19, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The Trustee argues that the Debtor did not commence making plan payments and is \$288.00 delinquent in plan payments, which represents multiple months of the \$288.00 plan payment. To date the Debtor has paid \$0.00 into the plan. 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.

46. 10-30099-E-13    DAVID/DEBORAH KRIEGER                      MOTION TO DISMISS CASE  
DPC-5                      Clark Nicholas                      8-29-14 [[85](#)]

**Final Ruling:** No appearance at the October 15, 2014 hearing is required.  
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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 29, 2014. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

<b>The Motion to Dismiss is granted and the case is dismissed.</b>
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#### **DELINQUENT**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,368.91 delinquent in plan payments, which represents multiple months of the \$1,797.00 plan payment. Prior to this hearing another payment of \$1,797.00 became due resulting in a delinquency of \$7,165.91. 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.