

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

February 18, 2015 at 10:00 a.m.

1. [10-43500](#)-E-13 LAWRENCE IRBY MOTION TO DISMISS CASE
DPC-1 C. Anthony Hughes 1-21-15 [[35](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

2. [09-44001](#)-E-13 BARRY/LISA STOELTING MOTION TO DISMISS
DPC-4 Scott Johnson 1-21-15 [[169](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

February 18, 2015 at 10:00 a.m.

3. [14-31901-E-13](#) SUSAN YORK
DPC-3 Harry Roth

MOTION TO DISMISS CASE
1-22-15 [[33](#)]

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 January 29, 2015. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 22, 2015. Dckt. 33.

The Trustee argues that the Debtor chose the wrong venue, as inadequate information has been provided within the documents filed to date. The Debtor's voluntary petition states her address as 467 Klamath Dr. Vacaville, California, but as the Debtor stated in the first Meeting of Creditors on January 15, 2015; that house was foreclosed. The Trustee is concerned as to why the Debtor is listing that as her address when the Debtor's mailing address is listed in Denver, Colorado.

The Debtor claims that she simply "resides" in Colorado, but is "domiciled" in Vacaville and seeking to transfer jobs from Colorado to California. Trustee points to Debtor's petition showing that the Debtor's mailing address was the one in Colorado. However, the Debtor's Statement of

Financial Affairs states that the only prior address of the Debtor in the last three years was the Vacaville one, and was the prior address to November 15, 2014 (Dckt. 8, page 31). Although, Schedule G (Dckt. 8, page 20) shows the Debtor had a one year residential lease with a creditor with the Debtor's Colorado address, ending in October 2015. Schedule A (Dckt. 8, page 3) indicates the Vacaville address was lost to foreclosure in October 2014.

Therefore, the Trustee argues that the Debtor does not qualify for venue based on residency under 28 U.S.C. § 1391.

DEBTOR'S OPPOSITION

Susan York ("Debtor") filed an opposition to the instant Motion on February 4, 2015. Dckt. 56.

Venue for Bankruptcy cases is set for in 28 U.S.C. § 1408, not 1391, which applies to civil broadly and is mostly to the domicile of "defendants." Under § 1408 a case under title 11 may be commenced in the district court for the district in which the "domicile, residence, principal place of business in the United States, or principal assets in the United States," for the person in the case who has been located for the 180 days preceding the commencement or longer if located in any other district.

The Debtor takes this to mean that residence and domicile do not mean the same thing, and each creates an alternative basis for venue. Neither is created or modified by merely changing homes. Residence is the place where one stays and to which one returns to. Here, the Debtor does not believe she has changed her residence, while also acknowledging others may when the Debtor changed her home to Colorado in February 2013.

Domicile on the other hand is established when one is physically present in a location and when one forms the intent to remain. The Debtor states that she lived in Vacaville from the 80s onward, established both residence and domicile there. Furthermore, when one is physically absent from one's place of domicile, one does not lose that domicile until one establishes a new domicile as long as one intends to return.

Debtor contends that she did not know of the foreclosure on the Vacaville property until after her husband's passing, and until then she intended to return permanently there. Moreover, she still intends to return to California as soon as financially practical.

The Debtor further argues that question 15 in the Statement of Financial Affairs is not phrased in either terms of residence or domicile. The question is non-technical and simply asks if the Debtor has "moved", which she admittedly has but only in the usual, non-technical sense of the term. The Debtor does not believe she has "moved", changed domicile, or residence since her husband's passing.

The Debtor notes that she has kept her California driver's license, filed taxes, and had a statement of intent to return to California. Her intent to return is verified by conduct and not negated by any fact other than her employment and current location. Her employment is based solely on the unavailability of jobs at Travis Air Force Base.

Therefore, the Debtor states it is her intent to return to California with continuing domicile in Vacaville, California.

Debtor further argues that an alternative basis for venue is the presence of her assets in Vacaville. 11 U.S.C. § 109 states that persons who may be a Debtor is a person who has property in the United States. Using *In Re Iglesias* (1998 SD Fla) 226 B.R. 721, which held that the ownership of property in the United States and specifically in the venue selected was a sufficient basis for jurisdiction. Here, the Debtor believes that even if her possessory interest in the Vacaville residence is not property, her household goods were located in Vacaville, 2 of her cars were in California, and she maintained checking and savings accounts all in California at the time of filing.

Therefore, as an alternative basis for venue the Debtor may rely upon the presence of her assets in this Court District.

DISCUSSION

The Trustee's Motion argues that the Debtor's case is in the wrong venue, because she is currently living in Colorado and based on her current residency she does not fall within 28 U.S.C. § 1391. However, the Debtor's argument is well taken that 28 U.S.C. § 1391 (Venue Generally) does not govern this situation, but rather 28 U.S.C. § 1408 applies. Which in pertinent part it states:

A case under title 11 may be commenced in the district court for the district-(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one hundred and eighty day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, or such person were located in any other district.

As discussed in COLLIER ON BANKRUPTCY, any one of the four alternative tests is sufficient. FN.1. The domicile is one's "permanent home" where one lives or intends to return, while the residence may be a temporary "roof over the person's head," with no intention of it being the permanent domicile. As addressed by the Ninth Circuit Appellate Panel,

"Everyone has a domicile and nobody has more than one domicile at a time. RESTATEMENT § 11. Once established, domicile continues until superseded by another domicile. *Id.*, § 19. One may reside in one place and be domiciled in another. *Holyfield*, 490 U.S. at 48.

For adults, a domicile of choice is established by simultaneous physical presence in a place and an intention to remain there. *Id.* at 48; *Kanter*, 265 F.3d at 857; RESTATEMENT § 15."

Donald v. Curry (In re Donald), 328 B.R. 192, 202 (B.A.P. 9th Cir. 2005).

To determine "domicile," "the difficult question is usually whether the individual had the requisite subjective intent..." *Id.*, 203. A person's declaration regarding his or her intent is pertinent, but ordinarily will be substantially discounted by the court when inconsistent with the objective facts. *Id.*

FN.1. Collier on Bankruptcy, Sixteenth Edition, ¶ 4.02, Venue for Cases Filed under Title 11; 28 U.S.C. § 1408.

The that the Debtor filed her Voluntary Petition on December 8, 2014. On the Petition, Debtor states under penalty of perjury that her street address is 467 Klamath Dr., Vacaville California. Dckt. 1. No other address is given for the Debtor at the time she commenced this bankruptcy case.

On Schedule A, Debtor lists the Klamath Dr. Property, stating that she has a "possessory interest only," valuing it at \$1.00. Dckt. 8 at 3. Schedule A further discloses that the property was "lost to foreclosure" in October 2014. Additionally, the Debtor was unaware of the foreclosure as she was "temporarily staying in Colorado" while her late husband was residing in the home. An unlawful detainer action is pending. *Id.*

Schedule B discloses that Debtor's late husband had withdrawn \$50,000.00 from community property bank accounts and may have transferred other personal property for less than fair market value. *Id.* at 7. No creditors are listed on Schedule D as having a lien on the Klamath Dr. Property. *Id.* at 10.

On Schedule G Debtor lists having a one year residential lease with "Camden Bellevue Station" in Denver, Colorado. *Id.* at 20. Debtor lists her employer as the Army and Air Force Exchange Service, current at Buckley AFB, Colorado.

The Statement of Financial Affairs discloses that the two law suits involving the Debtor are both in the California Superior Court for the County of Solano. Question 4, *Id.* at 28. The foreclosure of the Klamath Dr. Property is listed as having occurred on October 7, 2014 (the recording date). Question 5, *Id.* at 29.

Reviewing Schedule F discloses that Debtor's creditors are generally institutional creditors, debt servicers, or debt purchasers who have no connection to either the Eastern District of California or the District of Colorado. The creditors with ties to one of the Districts have ties to the Eastern District of California (relating to the residence or medical services).

On January 29, 2015, Debtor filed an Amended Petition which again states under penalty of perjury that her street address is the Klamath Dr. Property. Dckt. 45. However, Debtor now adds a mailing address in Denver, Colorado. *Id.*

On January 29, 2015, Debtor filed a Declaration stating that she lived in the Klamath Dr. Property with her husband from 1994 to 2013 (no specific date provided). Dckt. 48. Debtor states that she was laid off from her job with AAFES at Travis AFB, and accepted a transfer to the airbase in Denver so

as to continue in the Federal Employee Retirement System. Debtor has continued to maintain her California driver's license and filed joint income tax returns with her husband using the California address. Debtor states in this Declaration that it was her intention to find a job in California and return here when possible.

The Declaration also provides testimony as to Debtor's belief that the mortgage payments were being made by her late husband while she was in Colorado. The foreclosure came as a shock to her. Her testimony indicates that there were additional factors which came into play with the late husband's failure to make the mortgage payments (having both an Air Force and CalPERS retirement). Further, the circumstances described in the Declaration relating to his death are indicative of other health problems which would negatively impact a person's proper handling of finances.

Even if the court were to conclude that venue was not proper in California, dismissal is not the only option. The bankruptcy case may be transferred to a district, in the interests of justice or for the convenience of the parties. 28 U.S.C. § 1412.

Considering the totality of the circumstances and Debtor's connections to the Eastern District of California, the court determines that venue as provided by 28 U.S.C. § 1408 is proper in this District. This determination is made based on the additional information provided after the Trustee filed the present Motion to Dismiss. Based on the information provided in the Petition and prior to the filing of the Motion, bringing this issue to the court was proper. Once such a fundamental issue has been presented to the court, is it understandable that a Trustee would not seek to just "withdraw" the Motion.

The Debtor's move to Colorado is temporary, occasioned by a layoff at a California air base and an job being available at a Colorado air base. While not in quite the same circumstances as a member of the military who is regularly moved from place to place, Debtor's employer has jobs worldwide, necessitating accepting such "temporary deployments" in order to maintain employment and participation in an established retirement system.

From the Schedules, there is nothing to indicate anything special about the Debtor residing in Colorado. They have the earmarks of someone who has a temporary abode in Colorado, with her domicile continuing in California - where her retired husband continued to reside and (to the Debtor's knowledge) make payments on their family home. The Debtor's adult daughter also lived at the property as part of the California family unit.

The Motion is denied.

The court shall issue a minute 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.

4. [10-38904](#)-E-13 DONALD/JACQUELINE HEDRICK MOTION TO DISMISS CASE
DPC-1 Douglas Jacobs 1-21-15 [[56](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,243.12 delinquent in plan payments, which represents multiple months of the \$1,128.62 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S REPLY

Donald and Jacqueline Hedrick ("Debtors") filed a reply to the instant Motion on February 2, 2015. Dckt. 64.

The Debtors state that the reason for the delinquency is due to the fact that Debtors were paying under the terms of a proposed modified plan that was denied due to the fact that it relied on a stipulation that had not been approved. The Debtors state that they have filed a Motion to Approve Stipulation (Dckt. 60) and will file a new motion to modify once that order is entered. The Debtors state that they will cure the arrears by the time of the hearing.

DISCUSSION

On January 21, 2015, Debtors filed a motion to approve a compromise to value the secured claim of a creditor at \$0.00. Dckt. 60. Additionally, on February 2, 2015, Debtor filed a motion to confirm modified plan, supporting pleadings, and a modified plan. Dckts. 66-70.

Two items concern the court. The declarations state,

"1. Personal knowledge

Except as to those matters we have alleged on information and belief (which we believe to be true), we have personal knowledge of the facts contained herein and, if called upon, could testify to the facts contained in this Declaration."

Dckts. 62, 68. As the attorneys who practice in this District are well aware, the requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section.

It is not clear what information the Debtors have personal knowledge of and which are "alleged" merely on information and belief. In a declaration, a witness "testifies" and does not merely allege what they hope to be true as one might do in a complaint.

For purposes of this Motion ONLY, the court interprets the statements

in the Declarations to be made from the Debtors' personal knowledge under penalty of perjury - and subject to all of the consequences of making false testimony if such testimony turns out to be untrue.

Second Issue - Motion to Confirm

A review of the Motion to Confirm the Modified Plan appears to fail to comply with Federal Rule of Bankruptcy Procedure 9103 which requires that the motion itself (not a collage of various pleadings and the files in the case) state with particularity the grounds upon which the requested relief is based. Here, the grounds stated with particularity in the Motion are,

- A. On July 19, 2010, Debtors filed an Original Plan in this case.
- B. On September 25, 2010, the court confirmed the Original Plan.
- C. Debtor's are modifying the plan due to a reduction in income. The reduction is based on a permanent disability.
- D. Debtors have been paying their ongoing mortgage payment and arrears through the confirmed Original Plan.
- E. Debtors have been paying a percentage to creditors holding general unsecured claims through the Original confirmed plan.
- F. For the Modified Plan, Debtors intend to only make their mortgage payments through the plan for the remaining 10 months of the bankruptcy case.
- G. Debtors will be contributing all of the available funds through the plan.
- H. As stated in Debtors' declaration, the "believe" they can perform the plan.
- I. Debtors have made all payments required under the proposed Modified Plan.

Motion, Dckt. 66. This Motion fails to allege the grounds required under 11 U.S.C. §§ 1329, 1325, and 1322 for confirmation of a modified plan. At best, it merely says that the Debtors have lost wage income and want to stop making any payments to creditors, except to make their home mortgage payment.

Rather than dismissing this case, the court will give Debtors the benefit of the doubt. The Debtors shall, on or before February 28, 2015, file and serve on the Chapter 13 Trustee and U.S. Trustee a Supplement to the Motion (not an amended motion) which shall state with particularity the grounds upon which the Debtors assert that confirmation of the modified plan is proper under 11 U.S.C. §§ 1329, 1325, and 1322.

The court continues the hearing on the Motion to Dismiss to 3:00 p.m. on April 14, 2015, to be conducted in conjunction with the hearing on the motion to confirm the modified plan. FN.1.

FN.1. In the Motion it is alleged that the Debtors have cured the arrearage

on the claim secured by the first deed of trust against their residence - which is provided for as a Class 1 claim to be paid the current monthly mortgage payment and arrearage through the Chapter 13 Plan. See proposed Modified Plan, ¶ 2.08 providing for a \$729.34 monthly mortgage payment and no arrearage payment and Additional Provision ¶ 6.1. The Modified Plan payment is \$810.00 a month beginning in October 2014. ¶ 6.1 states that the Trustee shall pay creditors with general unsecured claims only until July 2014.

With an \$810.00 a month plan payment, assuming that it is all disbursed by the Trustee, the projected Chapter 13 Trustee fees would be \$64.80 a month (assumes an 8% Chapter 13 Trustee fee). That leaves \$15.86 a month of plan payments not provided for any distribution. It appears that since the Modified Plan freezes the unsecured claim dividend distributions as of July 2014, it does not spill to that class of claims.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on April 14, 2015, to be conducted in conjunction with the hearing on the Debtors' Motion to Confirm the Modified Plan.

IT IS FURTHER ORDERED that on or before February 28, 2015, the Debtors shall file and serve on the Chapter 13 Trustee and U.S. Trustee a Supplement to the Motion (not an amended motion) which shall state with particularity the grounds upon which the Debtors assert that confirmation of the modified plan is proper under 11 U.S.C. §§ 1329, 1325, and 1322. Reply, if any, to the Supplement to the Motion shall be filed and served on or before April 7, 2015.

5. [10-44204-E-13](#) IRMA SANCHEZ
DPC-2 Michael O'Dowd Hays

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

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

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

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

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

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

DEBTOR'S REPLY

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

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

counsel at 9%.

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

A review of the Case Profile shows that the car creditor has actually been paid thru January 26, 2015 a total of \$14,752.38 which is in excess of the \$11,160.00 called for in the plan. The unsecured creditors began receiving monthly dividends on November 27, 2013. Debtor's counsel did not total the individual compensation paid to each of them to date, but it clearly amounts to more than 1% of their claims.

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

TRUSTEE'S REPLY

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

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

DISCUSSION

The Debtor's argument that no new plan needs to be filed if the terms of the plan are altered is plainly incorrect. The Debtor seems to be taking the position that because the Debtor has satisfied the bare-bones, minimum distribution to creditors holding general unsecured claims based on the Debtor's projected disposable income and the Debtor's estimate of claims, that the Plan automatically is completed without the Debtor actually making all of

the payments into the Plan as required by the Plan. This is not the law. The terms of the confirmed plan states that the plan payments will complete in 60 months and that the general unsecured will receive "no less than 1%." The Debtor appears to believe that by satisfying the claims of the other class claims, that the general unsecured claims are also satisfied. That is not the language of the plan nor the way a Chapter 13 plan operates.

In substance, the Debtor has converted some of the Plan payments to her own uses rather than making the payments to the Chapter 13 Trustee that she promised and which she is obligated to pay pursuant to the order confirming the Chapter 13 Plan in this case.

In her Opposition, the Debtor slips in at the end that "if the court determines that a modified plan is necessary," then to allow the Debtor an additional fourteen days to proposed a modified plan – now that she has been caught converting plan payments (this last phrase the court's embellishment).

The court issued its order confirming this Chapter 13 Plan in this case on March 11, 2011. Dckt. 50. The plan confirmed is the one filed on September 15, 2015. The Confirmed Chapter 13 Plan clearly states, that Debtor shall make monthly plan payments of \$391.00 a month for a period of 60 months. Confirmed Plan ¶¶ 2.01, 2.03. There is no qualifier that the payments need to be made for "60 months, or such shorter time if the general unsecured claims come in lower than estimated by the Debtor."

It appears that what has happened in this case is that the Debtor, and possibly Debtor's counsel, saw the opportunity to violate this court's order confirming the plan and convert plan payments to the Debtor's personal use. Then, when caught, used the fabrication that the Debtor could unilaterally alter the terms of the confirmed plan and this court's confirmation order and just stop making payments.

The Debtor is in default under the plan she confirmed in this case. The Debtor has diverted \$391.00 a month of plan payments in this case. The Trustee's statement of payment reflects a number of monthly plan payment delinquencies. Dckts. 58, 60. The Debtor appears to have made the required monthly plan payment of \$391.00 through October 2015. As of February 2015, the Debtor owed \$1,564.00 (including the February 2015 payment) in \$391.00 a month plan payments.

At the time of filing bankruptcy Debtor reported that she was separated from her husband. On Schedule I, Debtor does not list any support payments by her ex-husband (assuming that they are divorced or continue to be separated) for Debtor and the three children listed as dependants. Dckt. 11 at 21. On the Statement of Financial Affairs the Debtor does not list any of the income of her husband pre-separation (which income of the community would be community property and income of the Debtor). *Id.* at 25.

On the Statement of Financial Affairs no dissolution proceeding is listed for pending or prior suits. Question 4, *Id.* at 26. No updated information has been provided by Debtor. Possibly her ex-husband is making substantial monthly spousal and child support payments monthly. Possibly they have reconciled and the family income is substantially higher than the \$3,897.97 gross "projected" based on year to date.

The Debtor has failed to rebut the present motion and provide evidence that the default has been cured. Rather, the Opposition consists merely of stating that the Debtor has default and should be allowed to default. FN.1.

FN.1. The court is cognizant and troubled by the fact that this case was filed in September 2010 and the Debtor performed 48 months of a 60 month plan before defaulting. Possibly the Debtor could of come in to modify the plan under 11 U.S.C. § 1329. Alternative, the Debtor could have sought a hardship discharge, if appropriate, pursuant to 11 U.S.C. § 1328(b). Neither step has been taken. Rather, Debtor and her counsel cavalierly argue that a minimum not less than amount of dividend for general unsecured claims because the maximum divided just because the Debtor says so. That is not accurate and demonstrates bad faith on the part of the Debtor in prosecuting this case.

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

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

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

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

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

6. [10-44204-E-13](#) IRMA SANCHEZ
DPC-2 Michael O'Dowd Hays

COUNTER MOTION TO CONCLUDE CASE
AND GRANT DISCHARGE
2-3-15 [[62](#)]

Tentative Ruling: The Opposition to the Motion to Dismiss the Chapter 13 Case was filed with a title that included "Countermotion to Conclude Case and Grant Discharge." No such motion was filed and noticed for hearing as required by the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules.

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

Below is the court's tentative ruling.

The Case Manager for this file has misread the Debtor's Opposition to the Motion to Dismiss as also constituting a "countermotion" requesting some form of relief. See Docket Entry No. 62. There is no such countermotion filed in this case.

First, any countermotion would have to be filed as a separate motion, not buried in some other pleading. Fed. R. Bankr. P. 9013; L.B.R. 9014-1(h).

Second, buried at the end of the Opposition to the Motion to Dismiss (Dckt. 62, pg. 2:20-24) is the following sentence,

"If the Court determines that a modified plan is still necessary to allow her bankruptcy to conclude in less than 60 months with the amount already paid in, it is respectfully requested that she be given fourteen days to do so."

Though Debtor's counsel has chosen to throw into the title of the Opposition the phrase "COUNTERMOTION TO CONCLUDE CASE AND GRANT DISCHARGE," merely placing a title on a pleading does not make it so. No such relief, or grounds for relief (Fed. R. Bankr. P. 9013) were requested (if stuffing a countermotion in an opposition was proper).

To the extent that anyone thought that the unsupported relief stated in the title was actually being sought by the Debtor, it is denied.

The court shall issue a minute 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 Debtor having included in the titled of her Opposition to the Trustee's Motion to Dismiss the Chapter 13 case the phrase "Countermotion to Conclude Case and Grant Discharge," no countermotion having been filed, such a "countermotion" having to be filed as a separate motion, no grounds having been stated with particularity in the Opposition upon which such relief was based, and upon review

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

IT IS ORDERED that the Countermotion is denied.

7. [14-31104](#)-E-13 MICHAEL WALDO ORDER TO SHOW CAUSE - FAILURE
 Michael O'Dowd Hays TO PAY FEES
 1-16-15 [[27](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michael Waldo ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 16, 2015. The court computes that 33 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 January 12, 2015).

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

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

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

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

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

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

8. [10-42605-E-13](#) GREG/DE ANNA MINO MOTION TO DISMISS CASE
DPC-1 Justin Kuney 1-20-15 [[103](#)]

Final Ruling: No appearance at the February 18, 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.**

9. [14-29406-E-13](#) FRANCES/ALBERT ENOCHS MOTION TO DISMISS CASE
DPC-2 Nima Vokshori 2-2-15 [[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 Debtors, Debtor's Attorney, and Office of the United States Trustee on February 2, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$171.00 delinquent in plan payments, which represents one month of the \$171.00 plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 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 offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Debtor has not filed any pleadings in response.

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

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

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

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

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

10. [14-31706-E-13](#) GUILLERMO/ESTELLA
DPC-2 BENAVIDES
Julius Engel

MOTION TO DISMISS CASE
1-22-15 [[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).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on January 22, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the chapter 13 Trustee, filed the instant Motion to Dismiss on January 22, 2015. Dckt. 26.

The Trustee argues that the Debtor did not commence making plan payments and is \$6,523.00 delinquent in plan payments, which represents one month of the \$6,523.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is

unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The original Meeting of Creditors was held on January 15, 2015. The Trustee continued the Meeting to February 12, 2015 at 10:30 a.m.

The Trustee's report of the continued First Meeting of Creditors is that the Debtor did not appear. February 12, 2014 Docket Entry Report.

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

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

The Debtor has failed to file any pleadings in response

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. [13-29408](#)-E-13 JOSEPH/CYNTHIA COSTANZO MOTION TO DISMISS CASE
DPC-1 Eric Schwab 1-16-15 [[41](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the case shall proceed in this court.

12. [14-32109-E-13](#) CYNTHIA PAYSINGER
DPC-1 Peter Macaluso

MOTION TO DISMISS CASE
2-2-15 [[21](#)]

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 February 2, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 2, 2015. Dckt. 21.

The Trustee argues that the Debtor did not commence making plan payments and is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$1,500.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee further asserts that the Debtor did not properly serve the Plan on all interested parties and has yet to file a motion to confirm the Plan. The Plan was filed after the notice of the Meeting of Creditors was issued. Therefore, the Debtor must file a motion to confirm the Plan. See

Local Bankr. R. 3015-1(c)(3). A review of the docket shows that no such motion has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

In reviewing the Docket, the court notes that the Debtors amended her Petition several times. A review of these amendments discloses the following:

- A. Original Petition filed on December 12, 2014, Dckt. 1. (Filed in *pro se*)
- B. First Amended Petition filed on January 23, 2014, Dckt. 19 (Filed by Counsel)
 - 1. Amended to disclose Debtor's prior Chapter 7 case - No. 12-38018.
 - 2. Amended to disclose Debtor's prior Chapter 13 case - No. 14-28235.
- C. Second Amended Petition filed on February 5, 2015, Dckt. 25 (Filed by Counsel)
 - 1. Repeats Amendment to disclose Debtor's prior Chapter 7 case - No. 12-38018.
 - 2. Repeats Amendment to disclose Debtor's prior Chapter 13 case - No. 14-28235.

Case No. 14-28235 was filed by the Debtor, in *pro se*, on August 13, 2014. The Trustee in that case reported that the Debtor failed to attend the First Meeting of Creditors. 14-28235; September 25, 2014 Docket Entry Report. The prior Chapter 13 case was dismissed on October 15, 2014.

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

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

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

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

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

13. [14-31712-E-13](#) JASON LYNCH AND AMANDA MOTION TO DISMISS CASE
DPC-2 GIBSON 1-15-15 [[19](#)]
C. Anthony Hughes

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on January 15, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 15, 2015. Dckt. 19.

The Trustee argues that the Debtor did not commence making plan payments and is \$125.00 delinquent in plan payments, which represents multiple months of the \$125.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The Meeting has been continued to March 5, 2015 at 10:30 a.m.

Debtor has failed to file any pleadings in response 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.

14. 14-27015-E-13 MARY BURKE MOTION TO DISMISS CASE
DPC-3 Peter Macaluso 1-28-15 [[56](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 28, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 28, 2015. Dckt. 56.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,715.00 delinquent in plan payments, which represents multiple months of the \$1,905.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion further argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 13, 2015.

The court's February 15, 2015 review of the Docket disclosed that the 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.

Denial of the plan occurred after several continued hearings. See Civil Minutes, Dckt. 54. The court expressed concern over substantial, unexplained reductions which were made to "show" how the Debtor could perform the proposed plan. This included an almost 50% reduction in Debtor's transportation expense. Further, the court expressed concern that Debtor "is not a active, fiduciary to the estate participant in this case, but merely "along for the ride," possibly doing the bidding of non-debtor third parties to advance their interests, not hers." *Id.* This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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

15. [10-52623](#)-E-13 GARY/LAURA GRAY
DPC-1 Mark Briden

MOTION TO DISMISS CASE
1-21-15 [[62](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

16. [11-41930](#)-E-13 JERRY/VERONICA GORDON MOTION TO DISMISS CASE
DPC-1 Steele Lanphier 1-21-15 [[34](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

17. [14-30130](#)-E-13 MICHAEL/MARCIA CLARK
Justin Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-13-15 [[32](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Michael and Marcia Clark ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 13, 2015. The court computes that 36 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on January 8, 2015).

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

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

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

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

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

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

18. [14-31030](#)-E-13 RAQUEL BLAKENEY
DPC-1 Scott Johnson

MOTION TO DISMISS CASE
1-21-15 [[18](#)]

Final Ruling: No appearance at the February 15, 2015 hearing is required.

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

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

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

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

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

19. [14-27934-E-13](#) LINDA MCINTOSH
Richard Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-9-15 [[34](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Linda McIntosh ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 9, 2015. The court computes that 40 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 (\$2.00 due on January 5, 2015).

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

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

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

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

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

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

20. [14-30135](#)-E-13 JULIE COLLIS-DAVIS
David Foyil

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-13-15 [[47](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

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 January 28, 2015. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 28, 2015. Dckt. 91.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,285.30.00 delinquent in plan payments. The Debtor is 61 months into a 60 month plan which required total payments of \$49,471.00. The Debtor has paid \$43,185.70.

The Trustee's records show 57 mortgage payments have been paid under the modified plan. A total of \$33,516.00 has been distributed to Glenn and Lori Duralia for the on-going claim plus \$4,918.82 to the pre-petition arrears amount. As of the date of the hearing, \$3,480.09 remains to be paid on the one pre-petition arrears per the modified plan. The Trustee is uncertain whether

the Debtor has made any payments directly to the creditor.

Trustee's records also show \$1,150.21, not including Trustee fees and interest, still owing to Class 2 creditor, Tehama County Tax.

The Trustee's records also show that \$8,175.00, including interest and Trustee fees, will complete the case through February 25, 2015.

The Debtor has not filed any pleadings in response.

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.

22. [14-31151](#)-E-13 EDWIN/ROSE-MARIE NOCEDA MOTION TO DISMISS CASE
DPC-1 Mikalah Liviakis 1-21-15 [[18](#)]

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 January 21, 2015. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 18.

The Trustee states that the Debtor failed to provide proof of social security number at the First Meeting of Creditors held on December 18, 2014. The Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

The Debtor has not filed any supplemental pleadings in connection with the motion to provide the Debtor's social security number. However, the court notes that on February 11, 2015, Debtor made a filing fee installment payment. Though no opposition was filed, the court set the matter for a hearing.

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

and the case is dismissed.

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

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

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

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

23.	<u>14-28953-E-13</u> JOHN/MARY ANDERSON	MOTION TO DISMISS CASE
	DPC-2 Dale Orthner	1-14-15 [<u>26</u>]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 14, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is denied without prejudice.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 14, 2015. Dckt. 26.

The Trustee's Motion argues that the Debtor did not file a Plan or a

Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on November 4, 2014. However, a review of the docket shows that Debtor has filed a new plan and a motion to confirm a plan.

The Trustee additionally seeks dismissal of the case on the basis that the Debtor is \$2,934.46 delinquent in plan payments, which represents one month of the \$2,934.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Review of Plan and Motion to Confirm

Because merely filing a pleading title plan or motion does not in and of itself constitute good faith, diligent prosecution of a bankruptcy case, the court has reviewed these documents.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 31, 33. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to generally provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

Debtor should review the Declaration and evidence presented to make sure that all of the required evidence is being presented – including the Chapter 7 liquidation comparison. Additionally, Debtor should make sure that evidence is presented, not merely the Debtor's personal finding of fact, that the plan is feasible.

Debtor also needs to review the "amended" schedule I and J filed in this case. Dckt. 30. These Schedules have been filed as "amended," not a supplement to show post-petition changes in income and expenses. As they have been filed, the "amended" information corrects errors in the original Schedules I and J dating back to September 2014. If that is what's intended, then it will be addressed at the hearing. If there are changes which have occurred such that the February 2015 finances are different than those as of the filing date, then the "amended" schedules are inaccurate.

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

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

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

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

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

24. [14-29154](#)-E-13 GARY/CHERYL PETERSEN
DPC-2 Brandon Johnston

MOTION TO DISMISS CASE
1-21-15 [[35](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

25. [14-32254-E-13](#) ZADIE DAVIS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-23-15 [[22](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Zadie Davis ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 23, 2015. The court computes that 26 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 20, 2015).

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

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

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

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

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

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

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

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

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 4, 2015. Dckt. 31

The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The Meeting was originally scheduled for January 29, 2015. The Meeting was continued to March 26, 2015 at 10:30 a.m.

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

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

The Trustee states that the Debtor has failed to pay one or more installment filing fees that were due on January 20, 2015. See Dckt. 7. However, a review of the docket shows that the Debtor paid the installment fee on February 5, 2015.

Lastly, the Trustee argues that the Debtor is causing unreasonable delay because the Debtor's filed plan calls for no payments and calls for no treatment of any creditors. Dckt. 11. The Trustee argues that the Debtor only seeks to delay proceedings and is not attempting to honestly reorganize their finances.

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

Due to the failure to provide required tax returns, failure to attend Meeting of Creditors, and causing unreasonable delay in filing a plan without any proposed plan payments or creditor treatment, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

27.	<u>10-20455</u> -E-13	TODD/JUDY LINDENMUTH	MOTION TO DISMISS CASE
	DPC-10	Mark Wolff	1-21-15 [<u>200</u>]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

28. [10-48255](#)-E-13 RODOLFO IBARRA MOTION TO DISMISS CASE
DPC-1 W. Scott de Bie 1-21-15 [[70](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

29. [14-31362](#)-E-13 SIPRIANO ARRIAGA MOTION TO DISMISS CASE
DPC-2 Scott Johnson 1-15-15 [[21](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 15, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 15, 2015. Dckt. 21.

The Trustee argues that the Debtor did not commence making plan payments and is \$1,105.00 delinquent in plan payments, which represents multiple months of the \$1,105.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

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

DEBTOR'S RESPONSE

Debtors filed a response to the instant Motion on February 3, 2015. Dckt. 25. The Debtors state that they are preparing an amended Chapter 13 plan and a motion to confirm that would bring the Debtors current under the amended plan.

DISCUSSION

A review of the docket shows that no plan or motion to confirm has been filed. Furthermore, the Debtors have not provided any evidence that they have cured their delinquency.

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

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

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

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

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

30. [10-25465](#)-E-13 LUCILLE/ALEXANDER CARIGMA MOTION TO DISMISS CASE
DPC-2 Scott Shumaker 1-16-15 [[138](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

31. [10-35966](#)-E-13 CHARLES/DEBORAH MENG MOTION TO DISMISS CASE
DPC-3 Mark Wolff 1-20-15 [[87](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

32. [14-31766](#)-E-13 ROBERTO RAMIREZ MOTION TO DISMISS CASE
DPC-2 Pro Se 1-22-15 [[25](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

33. [14-31269](#)-E-13 ALLEN VOGEL MOTION TO DISMISS CASE
DPC-2 Scott Johnson 1-21-15 [[21](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,395.00 delinquent in plan payments, which represents multiple months of the \$1,395.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

The Trustee 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).

DEBTOR'S RESPONSE

Debtor filed a response to the instant Motion on February 3, 2015. Dckt. 28. The Debtor states that the Debtor and his counsel have prepared an amended Chapter 13 Plan and a motion to confirm that would bring the Debtor current under the amended plan. Debtor's attorney anticipates that the amended plan and motion will be filed prior to the hearing. Debtor further state that he anticipated being able to timely make all plan payments moving forward under the amended plan.

DISCUSSION

A review of the docket reveals that no amended plan nor motion to confirm has been filed to date. Furthermore, the Debtor has not provided evidence that the Debtor has cured the delinquency in plan payments.

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

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

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

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

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

34. [14-29670](#)-E-13 CHERRONE PETERSON
DPC-1

MOTION TO DISMISS CASE
1-28-15 [[62](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

35. [10-39073](#)-E-13 KEVIN/CAROLE HANSON
DPC-2

MOTION TO DISMISS CASE
1-21-15 [[53](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

36. [14-26573-E-13](#) PA LEE
DPC-3

MOTION TO DISMISS CASE
1-21-15 [[57](#)]

Final Ruling: No appearance at the February, 18 2015 hearing is required.

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

37. [13-29476-E-13](#) JAMES ELMENDORF
DPC-1

MOTION TO DISMISS CASE
1-16-15 [[23](#)]

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 January 16, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 16, 2015. Dckt. 23.

Trustee argues that Debtor is in material default pursuant to § 5.03 of the plan. § 5.03 states in part, "if the plan will not be complete within six months of its stated term, **not to exceed 60 months**, Trustee may request

appropriate relief."

According to the Trustee's calculation and supported by Ed Weedman's declaration (Dckt. 25) the Debtor's Plan will complete in 69 months as opposed to 60 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

Trustee states that the Class 5 Priority claims were \$2,960.78 greater than scheduled. Debtor's Plan sought to pay 3.25% to unsecured creditors, and unsecured claims were \$43,594.66 greater than scheduled.

Therefore, the Trustee seeks to dismiss the case as the Debtor must be current under all payments called for by any pending, amended, or modified Plan as of the date of the hearing on the instant motion.

DEBTOR'S RESPONSE

Debtor filed a response to the instant Motion on February 3, 2015. Dckt. 29.

Debtor states he was a former client of Scott A. Coben, but substituted his attorney for present counsel after the Trustee filed the instant motion. Dckt. 27. Debtors' new counsel is in the process of modifying the Plan to forgive the January payment, \$200 for February-April, and then approximately \$708/month for the remaining 38 months.

The Debtor filed the response to put the Trustee's concern at ease, and inform the Court of the Debtor's current employment situation. The Debtor lost employment on February 1, 2015, and will not begin new employment until April 2015.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is in material default with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6). Specifically, § 5.03 as the Debtor will not be able to finish the plan in the allotted time.

While the Debtor's opposition states that a Motion to Modify is forthcoming, there remains no such motion filed to date.

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

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

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

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

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

38. [14-30977](#)-E-13 BOUNTHEU THIENPHETH

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-12-15 [[28](#)]

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 Bountheu Thienpheth ("Debtor"), Trustee, and other parties in interest on January 12, 2015. The court computes that 37 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 January 5, 2015).

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

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

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

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

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

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

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on January 15, 2015. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 15, 2015. Dckt. 37.

The Trustee argues that the Debtor did not commence making plan payments and is delinquent in plan payments. The Plan calls for payments to be received by the Trustee not later than the 25th day of each month. The first payment was due December 25, 2014, and as to date the Debtor has failed to pay anything 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.

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

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has failed to file supplemental pleadings in response 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.

40. [14-28078-E-13](#) GUADALUPE GONZALEZ
DPC-2

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

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

41. [14-29978-E-13](#) FELICISIMO SUNGA
DPC-2

MOTION TO DISMISS CASE
1-13-15 [[36](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The case having previously been converted to a Chapter 7 (Dckt. 43) on February 11, 2015, the Motion is dismissed as moot.

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

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

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

IT IS ORDERED that the Motion is dismissed as moot, the case having been previously converted to a case under Chapter 7.

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on January 9, 2015. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is granted and the case is converted to one under Chapter 7.

This Motion to Convert the Chapter 13 bankruptcy case of Dennis Flores ("Debtor") has been filed by David Cusick, Chapter 13 Trustee.

The case was commenced on March 17, 2014. The Trustee's Objection to Confirmation was heard and sustained by the court at the hearing held on June 3, 2014. Dckt. 70. The Trustee filed a Motion to Dismiss Case, which was continued to July 9, 2014. Dckt. 57. Debtor filed a Motion to Convert Case to Chapter 7 on July 1, 2014. Dckt. 79. The Debtor filed a Motion to Reconvert to Chapter 13 on October 3, 2014. Dckt. 97. The case was reconverted to a Chapter 13 on December 12, 2014.

Trustee asserts that the case should be dismissed or converted based

on the following grounds:

Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the reconversion of the case to a Chapter 13. In Debtor's Motion, the Debtor stated that he intended to file an amended Chapter 13 Plan within 15 days of the case being reconverted to a Chapter 13. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Furthermore, the Debtor has failed to file any amended or supplemental schedules and has failed to make any plan payments since the reconversion.

DEBTOR'S OBJECTION

Debtor filed an objection to the instant Motion on February 5, 2015. Dckt. 122. The Debtor states the following:

1. Debtor initially filed for a Chapter 13 because he was not receiving any income. His Workers Compensation claim has been approved and Debtor has the financial capability to have a Chapter 13 Plan approved. Debtor now has the ability to pay his creditors. Debtor is employed and earning a salary as a full time police officer.
2. The Debtor wishes to retain his home. Debtor can now pursue a loan modification and pay off his creditors. Liquidation at this time would be prejudicial to Debtors estate as well as prejudicial to creditors should Debtor be forced into a Chapter 7 liquidation proceeding.
3. Debtor will pursue a loan modification in the course of his adversary proceeding which would substantially eliminate the need to continue the Chapter 13 proceedings and the Debtor in that instance may dismiss the action.
4. The Debtor shall file an amended Chapter 13 Plan, schedules, and means test within the next 7 days.
5. Debtor did not receive notice of the Trustee's motion to reconvert to a Chapter 7 until many days after it was filed with the court. There has not been an unreasonable delay and the case should not be reconverted.
6. Debtor will pay the Chapter 13 Trustee a check of \$901.80 tomorrow

RULING

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

(B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

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

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

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(b).

As pointed out by the Trustee, this case has been converted and reconverted between a Chapter 13 and Chapter 7 twice since the case's inception. The Debtor appears to have made no effort to prosecute his case to the best of his abilities. This is evident in the fact that the Debtor has continued to fail to file an proposed plan following the conversion. The Debtor has failed to file supplemental schedules with his new employment and income. While the Debtor states in his opposition that one would be filed, as of this date, there has been nothing filed by the Debtor.

The real kernel of the Debtor's "plan" in this bankruptcy is stated in the Opposition as follows, "Debtor will pursue a loan modification on the course of his adversary proceeding which would substantially eliminate the need to continue the Chapter 13 proceeding and the debtor in that instance may dismiss the action. Opposition, pg. 1:28, 2:1-2; Dckt. 122. The Debtor does not intend to have a "bankruptcy plan" as required by 11 U.S.C. §§ 1322 and 1325, but a "litigation plan" to not provide for paying claims but use the automatic stay in lieu of obtaining the appropriate temporary injunction in the state court or district court (if a basis exists for the exercise of federal judicial power) proceeding.

Debtor may prosecute such litigation and enforce such rights. However, merely litigating does not a Chapter 13 bankruptcy plan make.

The court has also reviewed the information most recently stated by Debtor under penalty of perjury on the Schedules. Amended Schedule B filed on October 3, 2014, does not list any claims against Nationstar Mortgage or any other person as property of the debtor. Dckt. 100. On the Amended Statement of Financial Affairs Debtor lists pending litigation against the City of Fairfield (worker's comp) in San Francisco and against Santa Clara before the Workers' Compensation Appeals Board. Question 4, Dckt. 92. Neither are listed on Amended Schedule B.

A review of the Complaint filed in the Adversary Proceeding against Nationstar Mortgage, ADV. 14-2193, lists claims which are summarized as

follows:

- a. First Cause of Action. Fraudulent Transfer, 11 U.S.C. § 548. Debtor alleges that Defendant did not follow the procedures required under the Deed of Trust to foreclose non-judicially. Further grounds are alleged to be failures to provide notice of Debtor's rights under "RESPA, TILA and other state laws." It is further asserted that the purported assignment of the note and deed of trust to Defendant is fraudulent (robo-signing). The First Cause of Action ends with a statement that Defendant should be punished severely for its conduct. Though in the title to the First Cause of Action, the requested relief does not seek to have a transfer determined "fraudulent" and avoided.
- b. Second Cause of Action - Quiet Title, Injunctive Relief. The Second Cause of Action seeks to have the court determine the respective rights and interests of Debtor and Defendant in the real property. Debtor seeks the issue of a preliminary injunction.
- c. Third Cause of Action - Willful and Malicious Injury. In this Cause of Action states a claim that payments made to Defendant were unjust and such amounts should be recovered by Debtor.
- d. Fourth Cause of Action - Injunctive Relief. Debtor asserts in the Fourth Cause of Action that the Substitution of Trustee under the Deed of Trust did not comply with California law. It is asserted thereon that the purported foreclosure sale is void.
- e. Fifth Cause of Action - Declaratory Relief. Citing the California Code of Civil Procedure, Debtor seeks a declaration of the rights and obligations of the parties under the note and deed of trust, which is secured by the property.

14-2193, Dckt. 1. There appear to be no federal law claims asserted in the Complaint. There are not claims arising under the Bankruptcy Code or arising in the bankruptcy case. The dispute in the Adversary Proceeding appears to be a "garden variety" dispute between a borrower and a person asserting to have the rights under a note and deed of trust.

This court has addressed on a number of occasions the proper use of a Chapter 13 case to obtain an automatic stay in lieu of properly obtaining a preliminary injunction under applicable state law or Rule 65 of the Federal Rules of Civil Procedure. See, *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), affirm., *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

By the time a consumer files bankruptcy, it is likely that he or she could not otherwise post a bond for injunctive relief. This court has allowed the use of the automatic stay in lieu of such bond as part of a plan of reorganization, on two basic conditions. First, that the debtor be actively prosecuting litigation to resolve the dispute in the state court, the district

court, or an adversary proceeding before this court (if such is a proper exercise of federal court jurisdiction by the bankruptcy judge). Second, the debtor self fund an injunction bond by making monthly payments into a blocked account, with the monthly payments being in the amount of the mortgage payment. In that way, if the court determines that the use of the automatic stay as an injunction is improper, then damages as specified by Federal Rule of Civil Procedure 65(c) and Federal Rule of Bankruptcy Procedure 7065 can be awarded and paid. Second, if the debtor is wrong and there is a secured claim or there are damages for the possession of the property if the foreclosure is valid, monies exist to pay that claim or damages.

There is no proposed plan before the court. The last proposed plan in this case did not make provision for any payments for the secured claim, payments into an adequate protection fund (for payment of Rule 65(c) damages if the use of the automatic stay as an injunction was improper), or pay the claim. Dckt. 59. The proposed plan lists a Class 2 claim for Nationstar Mortgage, LLC, with a monthly payment of \$811.55. However, this presupposes with the Debtor admittedly has to litigate - whether there was a valid pre-petition foreclosure and whether Nationstar Mortgage, LLC has a claim in this case. It also ignored the pre-petition arrearage.

Debtor has now had almost a year to prosecute this case. It has gone from Chapter 13 to Chapter 7 and back to Chapter 13. There is no Chapter 13 Plan, there are no Chapter 13 Plan payments, and the only "plan" is to litigate a loan modification.

Cause exists to re-convert the case back to Chapter 7. Debtor can then be freed of the burdens of prosecuting a Chapter 13 Plan and focus on commencing the litigation with Nationstar Mortgage, LLC in a court which may properly exercise jurisdiction over that issue.

The court shall issue a minute 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 [nd the case is converted to a under Chapter 7 of Title 11, United States Code.

43. [14-31280](#)-E-13 JANET JENDREJACK
DPC-1

MOTION TO DISMISS CASE
1-21-15 [[18](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

44. [10-20081](#)-E-13 CRYSTAL DIBENEDETTO
DPC-5

MOTION TO DISMISS CASE
1-21-15 [[68](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

The court's decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on April 1, 2015.

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 21, 2015. Dckt. 68.

Trustee argues that Debtor is in material default with respect to the term of the confirmed plan, 11 U.S.C. § 1307(c)(6). The Trustee further states that the Debtor is delinquent in his payments having made his last payment on October 28, 2014. The Debtor is currently delinquent \$520.00 in plan payments with Debtor's monthly payment being \$260.00. Furthermore, prior to this hearing another \$260.00 will come due and as a result the Debtor will need to pay \$780.00 to bring the plan current.

DEBTOR'S RESPONSE

Debtor filed a response to the instant Motion on February 3, 2015. Dckt. 72. Debtor has been in the Plan for 60 months and owes only a final payment of \$420.00. The Debtor has paid in a total of \$13,912.00 and requests

a 30 day continuance so that the Debtor to pay the final \$420.00 to end her plan.

DISCUSSION

The Trustee seeks dismissal of the case on the basis that the Debtor is in material default with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6). Specifically, Trustee seeks dismissal of the case on the basis that the Debtor is \$520.00 delinquent in plan payments, which represents multiple months of the \$.00 plan payment.

While the Debtor states that she intends to pay the final amount to complete her plan, no evidence has been provided to show that Debtor has cured this default.

However, this case is at the eleventh hour, fifty-ninth minute, fifty-ninth second. There remains, by Debtor's calculation, one final payment of \$420.00. Even using the Trustee's calculation, the final payment is modest in light of the substantial performance.

Counsel for Debtor requests some additional time, not only for the Debtor to make the final payment, but for Counsel to communicate with Debtor.

The request for a continuance is reasonable and granted.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on April 1, 2015.

45.	<u>10-38984-E-13</u>	TRINH PHAM AND GIAO	MOTION TO DISMISS CASE
	DPC-1	NGUYEN	1-20-15 [<u>41</u>]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

46. [14-29184](#)-E-13 RAVEN TRAMMELL
Peter macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-15-15 [[60](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Raven Trammell ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 15, 2015. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 12, 2105).

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

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

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

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

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

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

47. [14-30284](#)-E-13 ANGELA CONWAY
Mikalah Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-20-15 [[30](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Angela Conway ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 20, 2015. The court computes that 29 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on January 14, 2015).

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Angela R. Conway, Debtor's Attorney, and Office of the United States Trustee on January 5, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

The court's decision is to xxxxx the Motion to Dismiss [and dismiss the case].
--

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

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

JANUARY 21, 2015 HEARING

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

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

DEBTOR'S RESPONSE

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

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

TRUSTEE'S REPLY

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

DISCUSSION

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

Debtor, with the assistance of Debtor's current counsel in the 2013 case and another attorney in the 2012 case, have filed and had dismissed two prior Chapter 13 cases since

- A. Chapter 13 Case No. 13-34363
 - 1. Filed: November 8, 2013
 - 2. Dismissed: August 15, 2014
- B. Chapter 13 case No. 12-32870
 - 1. Filed: July 12, 2012
 - 2. Dismissed: July 25, 2013

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

The proposed Chapter 13 Plan is having monthly payments of \$2,899.00 for a period of 60 months. Dckt. 7. The Chapter 13 Plan appears to address

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

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

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

The court shall issue a minute 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 **xxxxxxx**.

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 February 2, 2015. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing **February 18, 2015.**

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on February 2, 2015. Dckt. 43.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,383.00 delinquent in plan payments, which represents multiple months of the \$2,461.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

The Trustee's Motion additionally argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on January 13, 2015. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

50. [10-52186](#)-E-13 ERNESTO/KARLA GONZALEZ
DPC-1

MOTION TO DISMISS CASE
1-21-15 [[65](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the February 18, 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 January 14, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 14, 2015. Dckt. 33.

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on December 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 offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor has not filed any supplemental pleadings in response 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.

52. [14-31793](#)-E-13 LAURA ESPINOZA DE JAIMES ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-7-15 [[21](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Laura Espinoza De Jaimes ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 7, 2015. The court computes that 42 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$79.00 due on January 5, 2015).

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

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

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

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

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

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

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 January 13, 2015. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

David Cusick, the Chapter 13 Trustee, filed the instant Motion to Dismiss on January 16, 2015. Dckt. 42.

The Trustee argues that Debtor is in material default pursuant to 11 U.S.C. § 1307(c) which states that Debtor is in material default under §5.03 of the plan which provides, "If Debtor defaults under this plan or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to the Trustee, the Plan will complete in 72 months as opposed to 60 months proposed, exceeding the maximum amount of time allowed under 11 U.S.C. § 1322(d). It appears that the Class 1 mortgage arrears claim was \$4,495.80 greater than scheduled.

Trustee additionally states that the Debtor was provided a Notice of Filed Claims on March 14, 2014 (Dckt. 40) which indicated that a motion to modify was required if the Notice of Filed Claims includes allowed claims which will prevent the Chapter 13 plan from being completed timely.

DEBTOR'S OPPOSITION

Debtor filed an opposition to the instant Motion on February 3, 2015. Dckt. 46.

Debtor and her counsel have prepared a modified Chapter 13 Plan and a motion to confirm said plan that would allow the debtor to complete her monthly payments in the maximum amount of time allowed.

DISCUSSION

A review of the docket shows that the Debtor filed a Motion to Confirm Modified Plan and a proposed modified plan on February 12, 2105. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 48, 52. 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. A cursory review of the proposed plan appears to address the concerns of the Trustee. For purposes of the instant Motion, the Debtor appears to have corrected the default and no cause exists.

Cause does not exist to dismiss this case. The motion is denied.

The court shall issue a minute 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.

54. [14-30994](#)-E-13 JOHN MONROE

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-12-15 [[29](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on John Monroe ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on January 12, 2015. The court computes that 37 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 January 6, 2015).

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

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

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

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

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

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

55. [10-27495](#)-E-13 KEVIN SALEM
DPC-4

MOTION TO DISMISS CASE
1-21-15 [[71](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

56. [11-20395](#)-E-13 RONNIE/BLOSSOM SORIANO MOTION TO DISMISS CASE
DPC-5 1-21-15 [[63](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

57. [13-23198](#)-E-13 BYRON/JANET MUDD MOTION TO DISMISS CASE
DPC-1 1-21-15 [[68](#)]

Final Ruling: No appearance at the February 18, 2015 hearing is required.

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

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

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

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

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

58. [11-48418](#)-E-13 MATTHEW HOGUE
DPC-1

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS
12-19-14 [[72](#)]

Tentative Ruling: The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 6, 2015. By the court's calculation, 12 days' notice was provided.

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

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments is -----.

David Cusick, the Chapter 13 Trustee, served a Notice of Default and Application to Dismiss on December 19, 2014 pursuant to Local Bankr. R. 3015-1(g). Dckt 72.

Trustee argues that the Debtor has failed to make all payments due under the plan. As of December 18, 2014, payments are delinquent in the amount of \$2,051.00. An additional payment of \$870.00 will become due on December 25, 2014.

On February 5, 2015, the court issued an Order for Hearing on Notice of Default setting the hearing for 10:00 a.m. on February 18, 2015. Dckt. 75.

APPLICABLE LAW

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

(g) Dismissal Due to Plan Payment Defaults.

- (1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.
- (2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.
- (3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either
 - (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or
 - (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.
- (4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.
- (5) Rather than utilize the notice of default procedure authorized by this paragraph, the trustee may file, serve, and set for hearing a motion to dismiss the case. Such a motion may be set for hearing pursuant to

either LBR 9014-1(f)(1) or (f)(2).

DISCUSSION

The Debtor has not filed any supplemental pleadings in connection with the Notice.

At the hearing, **xxxxxxx**

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

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

The Notice of Default and Motion to Dismiss Case For Failure to Make Plan Payments filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is **xxxx**.