

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

February 22, 2017, at 10:00 a.m.

1.	<u>16-24701</u> -E-13 DPC-2	KHAMMAY/KHAMMAI PHOMMAVONGSA Timothy Walsh	MOTION TO DISMISS CASE 1-24-17 <u>[37]</u>
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Final Ruling: No appearance at the February 22, 2017 hearing is required.

<p>The Motion to Dismiss is dismissed without prejudice, and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 9, 2017, Dckt. 50; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 50, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

February 22, 2017, at 10:00 a.m.

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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 December 14, 2016. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,475.00 delinquent in plan payments (with another \$3,120.00 coming due before the hearing), which represents multiple months of the \$3,120.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

JANUARY 18, 2017 HEARING

At the hearing, Debtor present the court with cashiers checks to cure all but slightly more than \$200.00 of the arrearage. The court continued the matter to 10:00 a.m. on February 22, 2017. Dckt. 56.

DISCUSSION

No further pleadings have been filed in this case indicating that the remaining delinquency has been cured.

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

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

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

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

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

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 10, 2017, Dckt. 67; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 67, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

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 23, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Timothy Vincent and Jennifer Vincent ("Debtor") are \$3,678.00 delinquent in plan payments (with another \$2,939.00 coming due before the hearing), which represents multiple months of the \$2,939.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 9, 2017. Dckt. 59. Debtor's counsel states that he "has not had an opportunity to discuss the default and potential options with" Debtor, but he also states that they oppose the Motion nonetheless. Debtor plans to show evidence at the hearing that either the delinquency has been cured or a Modified Plan and Motion to Confirm have been docketed.

Unfortunately for Debtor, a promise to pay or file a new plan is not evidence of having done so. 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.

5. [15-29404](#)-E-13 TAEVONA MONTGOMERY CONTINUED MOTION TO DISMISS
DPC-3 Richard Jare CASE
12-14-16 [[119](#)]

Final Ruling: No appearance at the February 22, 2017 hearing is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion to Dismiss is denied without prejudice.

The Chapter 13 Trustee moved to Dismiss this case due to delinquency. Dckt. 119. Debtor filed a Modified Plan and Motion to Confirm, which the court granted on January 30, 2017. Dckt 169. Additionally, the court approved a Motion to Sell for Debtor's property on February 14, 2017.

Debtor having demonstrated a will to prosecute this case, the Motion is denied without prejudice.

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

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

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

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

6. [16-27906](#)-E-13 ALBERT MARTIN
Dale Orthner

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-5-17 [18]**

DEBTOR DISMISSED: 01/22/2017

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an *Ex Parte* Motion to Dismiss the pending Motion on February 9, 2017, Dckt. 232; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 232, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

8. [16-27308](#)-E-13 **ROBERT PORTER**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-6-17 [[22](#)]

DEBTOR DISMISSED: 01/11/2017

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

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

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

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

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

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, then 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 Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 20, 2017. 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 13, 2017.

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

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

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

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

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

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

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 24, 2017. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

The Motion to Dismiss is ~~denied/granted, and the case is dismissed.~~

The Trustee seeks dismissal of the case on the basis that:

- A. Alma Chavez-Nunez (“Debtor”) is \$1,000.00 delinquent;
- B. Debtor failed to appear at the First Meeting of Creditors; and
- C. Debtor failed to provide all business documents.

UNITED STATES’S SUPPORT OF TRUSTEE’S MOTION

The United States, on behalf of the Internal Revenue Service (“IRS”), filed an Objection to Confirmation of Plan on January 31, 2017. Dckt. 22. The IRS joins the Trustee’s Objection and adds that Debtor has failed to file pre-petition tax returns as required by 11 U.S.C. § 1308. Additionally, the IRS’s asserted claim causes Debtor to exceed the debt limit of 11 U.S.C. § 109(e).

DEBTOR’S DECLARATION

Debtor filed a Declaration on February 8, 2017. Dckt. 26. Debtor states that she has been dealing with several personal matters, including injuries from a vehicle collision on October 18, 2016; the death of her sister on January 6, 2016; and the illness of her elderly father, who was hospitalized recently. Debtor states that she missed the Meeting of Creditors because of her sister’s death, and she plans on attending the continued Meeting of Creditors on February 9, 2017. She also states that she has provided all the required business documents to the Trustee. Debtor states that she has now filed the 2014 and 2015 income tax

returns. Finally, Debtor intends to pay \$2,000.00 in plan payments at the Meeting of Creditors on February 9, 2017.

DISCUSSION

The Trustee's and IRS's objections are well-taken.

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,000.00 delinquent in plan payments, which represents one month of the \$1,000.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee alleges that 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 that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The Trustee reports that Debtor and counsel appeared at the continued First Meeting, which has now been concluded. February 10, 2017 Docket Entry Report.

Debtor has failed to timely provide the Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Those documents are required seven days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I). Without Debtor submitting all required documents, the court and the Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee having concluded the First Meeting, this indicates that the Trustee was provided with the above documents.

The IRS states that Debtor failed to file pre-petition federal income tax returns. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

The IRS alleges that Debtor does not qualify for Chapter 13 treatment because the debt limit in 11 U.S.C. § 109(e) has been exceeded. That section limits Chapter 13 eligibility to individuals with regular income who owe "on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$394,725 and noncontingent, liquidated, secured debts of less than \$1,184,200." Debtor's Schedules plus the IRS's claim (the unsecured portion of \$5,745,427.64 by itself exceeding the limit) indicate that Debtor exceeds the Code's unsecured debt limit.

Debtor's Declaration addresses four of the five grounds that have been alleged for dismissal of this case. As to the Meeting of Creditors, the Trustee's Report of February 10, 2017, indicates that Debtor appeared. There is no discussion on the docket, though, of whether Debtor has cured the delinquency, provided all business documents, and filed all tax returns. Additionally, Debtor has not addressed the United States's ground that she exceeds the debt limit of 11 U.S.C. § 109(e).

At the hearing, the Trustee reported ~~xxxxxx~~.

Cause exists to dismiss this case. The Motion is ~~denied/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 ~~denied/granted, and the case is dismissed~~.

Final Ruling: No appearance at the February 22, 2017 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 23, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,550.00 delinquent in plan payments (with another \$650.00 coming due before the hearing), which represents multiple months of the \$650.00 plan payment. Failure to make plan payments is unreasonable delay that 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.

Final Ruling: No appearance at the February 22, 2017 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 August 18, 2016. By the court's calculation, 55 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). 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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on May 31, 2017.

The Trustee's Motion argues that Bun Auyeung and Soo Tse ("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 July 22, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay that is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on September 27, 2016. Dckt. 264. Debtor asserts the following points:

- A. Debtor's Motion to Avoid Lien of Barton and Paula Christensen and Debtor's Motion to Confirm Plan were denied on July 28, 2014.
- B. An appeal of the Motion to Avoid Lien was filed on August 6, 2014, and that appeal is pending.
- C. The total amount of claims is \$382,329.01, of which \$237,632.27 relates to a surrendered property from Debtor's prior Chapter 7 case.
- D. Of the remaining \$144,696.74 secured claims amount, Barton Christensen and Paula Christensen have a claim for \$140,000.00.
- E. Debtor's plan proposes thirty-six (36) payments of \$100 and a lump-sum payment of \$13,000.00, which totals \$16,600.00.

- F. Debtor is in month thirty-seven (37) and have paid \$16,700.00.
- G. Debtor's plan would be completed if the appeal is granted in Debtor's favor.

OCTOBER 12, 2016 HEARING

At the hearing, Debtor's counsel argued that he did not know that he needed to get a plan confirmed and believed that so long as he filed an appeal of the court denying confirmation of the prior plan, Debtor could exist in this bankruptcy case for years with no confirmed plan or make any attempt to confirm a plan.

The arguments of counsel reminded the court that the denial of confirmation was not merely due to denying the motion to avoid the lien, but Debtor not qualifying as a Chapter 13 debtor—there being no regular income to fund a plan. Instead, Debtor stands as the proxy for Debtor's children who have "contributed" \$13,000 to fund the plan.

That further reminded the court that it appears that Debtor may be the subject of possible elder abuse, the children preventing Debtor from receiving substantial equity in the property to fund their day-to-day expenses, instead forcing Debtor to live in squalor. The court questions how counsel for Debtor, who owes a fiduciary duty to Debtor, would allow this to continue.

Counsel for Debtor provided no good explanation for why or how he could believe that Debtor could ignore a secured claim and exist in this Chapter 13 case with no payments to creditors because no plan was confirmed.

The court debated dismissing the case, but decided to continue the matter to 10:00 a.m. on November 16, 2016, to give Debtor's counsel an opportunity to propose and seek confirmation of a plan that complies with the Code.

The court also mentioned possibly referring this matter to the Sacramento County department responsible for investigating elder abuse. Lastly, the court ordered Debtor and any children responsible for the care of Debtor to appear on October 18, 2016, for the hearing on the Motion for Omnibus Relief.

MOTION FOR OMNIBUS RELIEF HEARING ON OCTOBER 18, 1016

At the hearing, the court could not determine—with Debtor and her daughter present—that Debtor was capable of administering the case on behalf of the deceased co-debtor or that further administration of this Chapter 13 is in the best interests of all parties. The court denied without prejudice the Motion for Omnibus Relief.

NOVEMBER 16, 2016 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 6, 2016. Dckt. 286. The court ordered Debtor to file a declaration by November 30, 2016, written in her native language along with an English translation that was created by an independent, credible third party translation service.

The court also ordered Debtor to file a supplemental briefing providing the court with the laws and regulations that would Debtor's homestead exemption proceeds to be confiscated by the United States government and not be used for Debtor's housing, care, and basic life needs.

DECEMBER 6, 2016 HEARING

Counsel for Debtor reported that he and counsel for the creditor asserting the secured claim have agreed to the court's mediation program (BDRP) and that they have selected Walter Dahl to be their mediator. The court continued the hearing on the matter to 10:00 a.m. on February 22, 2017, to allow the parties to address the issues (which may be the first time that they have set down to try to find respective, reasonable, financially prudent resolutions).

The court noted that counsel for Debtor had not yet provided the court with the legal authority by which he has argued that if Debtor were to sell the property and claim her homestead exemption in the proceeds that the federal government would seize the monies because Debtor receives Medicare. The court has found unpersuasive the prior authority cited—Debtor's non-lawyer daughter, who provided to the court no specialized knowledge or experience in such matters. Debtor's counsel did file a declaration in which Debtor testified under penalty of perjury to such "fact."

DEBTOR'S SUR-SUPPLEMENTAL REPLY

Debtor filed a Sur-Supplemental Reply on February 13, 2017. Dckt. 297. Debtor notes that the court signed the Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program on January 31, 2017. Dckt. 291 (stating that the Order was signed on January 29, 2017). Debtor requests that the court continue the hearing on this Motion by ninety days.

DISCUSSION

On November 9, 2016, Debtor filed a supplement to the Opposition. In reviewing the Opposition, the court notes that it is long on argument and short on citation to any legal authorities. The one case authority cited in the Supplemental Opposition is "*In re Patrick*, Case No. 12-03042 NPO (S.D. Miss. 2013)." That case addressed whether a debtor is required to use Social Security payments to fund a Chapter 13 Plan.

On November 30, 2016, Debtor had her attorney file a Reply stating that an unauthenticated exhibit is filed as Exhibit B, but because of the "time difference" between the U.S. and China, no declaration from the Chinese translator has been obtained. No explanation is provided as to why no certified translator in the United States is available to provide the service.

Exhibit B, Dckt. 288, the purported English translation of Debtor's handwritten declaration, states in significant part:

- A. Debtor is 85 years old.
- B. Debtor and her daughter have been living in "Erpu" for approximately 30 years.

- C. In 2006 Debtor was involved in “E.D.’s” deceit.
- D. Debtor has been defrauded by “E.D.” for ten years.
- E. Debtor does not know if the “land” has been “sold out.”
- F. Fines have forced Debtor into bankruptcy.
- G. Debtor sold everything in the “coffer” that she intended to give her daughters as a gift for their marriage.
- H. Debtor has nothing else for them, on the “land.”
- I. Debtor wants to live in “Mengfang” until she dies.

Thus, Debtor appears to have little intention of complying with the Bankruptcy Code, but just wants to live in the house, not providing for payments to creditors.

Debtor continues to obfuscate the real legal issue of eligibility for Debtor under 11 U.S.C. § 109(e) that “Only an individual with regular income . . .” may be a Chapter 13 debtor. Debtor ignores any case law and quotes the legislative history that states “regular income” for this Code section may include: “individuals whose primary income is from investments, pensions, social security, or welfare.” This language from the legislative history is quoted in Debtor’s Supplemental Pleading (p. 2:22–26) and then ignored when Debtor argues that because most of the money to fund a plan is a one-time “gift,” that is adequate.

In this Supplemental Opposition, Debtor’s counsel continues the theme that the two debtors in this case “are neither sophisticated debtors, and are persons of limited means trying to simply live in their home peacefully and undisturbed.” Dckt. 277 at p. 5:13–15. Though counsel continues to speak of Debtor in the plural, one of the debtors has passed away during this case. Additionally, while counsel continues the theme of the “unsophisticated debtor,” it had been disclosed that the late debtor was a doctor (MD) and at the last hearing that the surviving debtor has a university degree.

A short declaration has been filed for Debtor, in which she states that she has written a longer declaration in her native language (since she does not speak or write in English), and it will be filed with the court at some later date. Declaration, Dckt. 278. In this Declaration, Debtor states that if she sells the property and claims her homestead exemption

“I will not be able to keep any cash due to the social security restrictions and how it will affect my receiving health care, and the cost which may be in excess of the \$855 per month under the Obamacare plan.”

Id., p. 2:5–9. Counsel for Debtor has not provided the court with any laws or regulations that provide that the government will confiscate Debtor’s homestead exemption portion of the proceeds from the sale of the property. Rather, it appears that counsel is being driven (and using as a canard) the statements of the “neither sophisticated” Debtor that he has argued to this court. Or possibly he is relying on the “legal

conclusions” of Debtor’s daughter, Florence Auyeung. *See* Florence Auyeung Declaration, Dckt. 280 at p. 2:9–11, stating under penalty of perjury, “While it seems like selling the property will be [sic] bring some benefit to my mother, the sale would be taken by the social security administration and medicare.” The statements by Debtor’s daughter, who may want to increase her inheritance rather than creditors be paid, is not persuasive testimony that the federal government will confiscate all of Debtor’s exemption and leave her penniless, wasting away in a convalescent home.

Cause exists to dismiss this case. Nevertheless, the parties have agreed to, and the court has approved of, mediation. Debtor has properly requested that this matter be continued, and the court continues the hearing on this matter to 10:00 a.m. on May 31, 2017.

The court shall issue a minute 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 May 31, 2017.

13. [16-27420-E-13](#) JUDITH DARNOLD
Steele Lanphier

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-12-17 [[30](#)]

Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 14, 2017. The court computes that 39 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 9, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that 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 bankruptcy case shall proceed in this court.

14. [16-27723](#)-E-13 DARRYL/BRIDGETTE MERRITT ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
1-25-17 [50](#)

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, then 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 Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 27, 2017. 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: \$77.00 due on January 20, 2017.

The hearing on the Order to Show Cause is continued to 10:00 a.m. on March 29, 2017.

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

DEBTOR'S MOTION

Darryl Merritt and Bridgette Merritt (“Debtor”) filed a Motion on February 9, 2017, requesting that all February hearings in this case be continued so that Debtor “can have time to hire affordable counsel” and decide whether to “move forward with this case or ask[] for it to be dismissed.” The court notes that no proof of service has been filed with the supplemental *ex parte* motion.

The court notes that Debtor has filed, jointly and individually, twelve bankruptcy cases since 2010, all of which have been dismissed. In the current case, the court issued an order granting relief from the automatic stay to allow a person to take state court action to recover possession of real property from Debtor. Order, Dckt. 55.

The court takes Debtor at their word that the request for a continuance is to obtain counsel and make an informed decision on exercising their bankruptcy rights, and not merely for purposes of delay.

The court shall issue a minute 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 hearing on the Order to Show Cause is continued to 10:00 a.m. on March 29, 2017.

15. [16-27723-E-13](#) **DARRYL/BRIDGETTE MERRITT** **MOTION TO DISMISS CASE**
DPC-2 **Pro Se** **1-24-17 [46]**

Final Ruling: No appearance at the February 22, 2017 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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 29, 2017.</p>
--

The Trustee argues that 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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,053.00 delinquent in plan payments (with another \$2,053.00 coming due before the hearing), which represents one month of the \$2,053.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee reports that Debtor failed to disclose on the petition the following thirteen prior bankruptcy cases:

- A. Case No. 09-43620
 - 1. Date Filed: October 30, 2009
 - 2. Chapter: 7
 - 3. Date Discharged: February 16, 2010
- B. Case No. 10-45377
 - 1. Date Filed: September 23, 2010
 - 2. Chapter: 13
 - 3. Date Dismissed: October 12, 2010
 - 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- C. Case No. 11-23050
 - 1. Date Filed: February 7, 2011
 - 2. Chapter: 13
 - 3. Date Dismissed: March 11, 2011
 - 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- D. Case No. 11-46236
 - 1. Date Filed: November 4, 2011
 - 2. Chapter: 13
 - 3. Date Dismissed: May 31, 2012
 - 4. Reason for Dismissal: Delinquency and failure to file or seek confirmation of a new plan after court denied prior one
- E. Case No. 12-30610
 - 1. Date Filed: June 2, 2012
 - 2. Chapter: 13
 - 3. Date Dismissed: September 14, 2012
 - 4. Reason for Dismissal: Failure to pay filing fees
- F. Case No. 12-35785
 - 1. Date Filed: August 30, 2012
 - 2. Chapter: 13
 - 3. Date Dismissed: October 5, 2012
 - 4. Reason for Dismissal: Failure to file required documents, Chapter 13 plan, and Motion to Confirm by court's extended deadline
- G. Case No. 12-38111
 - 1. Date Filed: October 11, 2012

2. Chapter: 13
 3. Date Dismissed: December 13, 2012
 4. Reason for Dismissal: Failure to file Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- H. Case No. 13-25106
1. Date Filed: April 15, 2013
 2. Chapter: 13
 3. Date Dismissed: April 26, 2013
 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- I. Case No. 13-25195
1. Date Filed: April 16, 2013
 2. Chapter: 13
 3. Date Dismissed: April 29, 2013
 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- J. Case No. 13-28368
1. Date Filed: June 21, 2013
 2. Chapter: 13
 3. Date Dismissed: July 9, 2013
 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- K. Case No. 15-22220
1. Date Filed: March 20, 2015
 2. Chapter: 13
 3. Date Dismissed: March 31, 2015
 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C-1, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules
- L. Case No. 15-23929
1. Date Filed: May 14, 2015
 2. Chapter: 13
 3. Date Dismissed: May 26, 2015
 4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C-1, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules

M. Case No. 15-24690

1. Date Filed: June 10, 2015
2. Chapter: 13
3. Date Dismissed: July 7, 2015
4. Reason for Dismissal: Failure to timely Chapter 13 plan, Form 22C-1, Schedules A–J, Statement of Financial Affairs, Statistical Summary, and Summary of Schedules

Debtor was required to report any bankruptcy cases filed within the previous eight years. *See* Voluntary Petition, p.3, Dckt. 1. Debtor reported filing, but did not report any case numbers, dates, or districts. Debtor’s “pattern of filing and dismissal . . . combined with the [Debtor’s] failure to disclose all required prior filings, strongly indicates [Debtor] does not intend to use the bankruptcy process the way it was intended. The [Debtor’s] creditors have been wrongly hindered or delayed from enforcing their rights.” *Landis v. Barttels (In re Barttels)*, No. 10-01145-13, 2011 Bankr. LEXIS 5588, at *8 (Bankr. E.D. Cal. Jan. 28, 2011) (dismissing Debtor’s bankruptcy case with prejudice because of undisclosed serial filings and barring Debtor from filing another bankruptcy petition within two years).

DEBTOR’S MOTION

Darryl Merritt and Bridgette Merritt (“Debtor”) filed a Motion on February 9, 2017, requesting that all February hearings in this case be continued so that Debtor “can have time to hire affordable counsel” and decide whether to “move forward with this case or ask[] for it to be dismissed.” The court notes that no proof of service has been filed with the supplemental ex parte motion.

The court takes Debtor at their word that the request for a continuance is to obtain counsel and make an informed decision on exercising their bankruptcy rights, and not merely for purposes of delay.

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 hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 29, 2017.

Final Ruling: No appearance at the February 22, 2017 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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,140.00 delinquent in plan payments (with another \$570.00 coming due before the hearing), which represents multiple months of the \$570.00 plan payment. Failure to make plan payments is unreasonable delay that 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.

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.

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 December 14, 2016. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,570.20 delinquent in plan payments (with another \$545.71 coming due before the hearing), which represents multiple months of the \$545.71 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

JANUARY 18, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 22, 2017, to allow Debtor to communicate with counsel or find replacement counsel.

No further pleadings have been filed that indicate whether the delinquency has been cured. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

18. [16-22328-E-13](#) **MARIA COLEMAN** **MOTION TO DISMISS CASE**
 DPC-2 **Scott Shumaker** **1-24-17 [58]**

Final Ruling: No appearance at the February 22, 2017 hearing is required.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

<p>The Motion to Dismiss is denied without prejudice.</p>
--

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by Debtor. Dckts. 64 & 66. 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 Debtor's personal knowledge. Fed. R. Evid. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss 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.

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.

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 23, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,850.00 delinquent in plan payments (with another \$570.00 coming due before the hearing), which represents multiple months of the \$570.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 2, 2017. Dckt. 184. Debtor promises to be current by the hearing. Unfortunately for Debtor, a promise to pay is not evidence of such.

The court further notes that while the Debtor purports to "promise to pay," Debtor has failed (or is unwilling) to provide any testimony in opposition to the Motion. Debtor offers no testimony as to she will be able to amass the equivalent of five monthly payments of her projected disposable income into one monthly payment to cure the arrearage and make the current monthly pay. Debtor offers no testimony explaining how she fell into such substantial financial arrears, why such is not likely to reoccur, and why such testimony is credible.

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.

20. [16-27632-E-13](#) **CHARLES JACKSON AND** **MOTION TO DISMISS CASE**
 DPC-2 **PAMELA JACKSON** **1-25-17 [36]**
 Pauldeep Bains

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.

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 25, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee argues that Charles Jackson, Jr. and Pamela Jackson ("Debtor") did not commence making plan payments and is \$12,326.16 delinquent in plan payments, which represents multiple months of the \$6,163.08 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR'S RESPONSE

Debtor filed a Response on February 13, 2017. Dckt. 42. Debtor's counsel reports that he has been unable to reach Debtor to discuss the delinquency. Debtor requests that the Motion be denied if Debtor cures the delinquency before the hearing.

The court notes that in a Declaration filed on February 13, 2017, and submitted with a Response to the Trustee's Objection to Confirmation of Plan (DPC-1), Debtor alleges that the first payment was sent via cashier's check before the Meeting of Creditors, but it never reached the Trustee. Dckt. 46. Debtor was

able to recover that check but did not resubmit it immediately. Debtor intends to make the first payment on or before February 14, 2017, and a second payment by hand delivery on February 17, 2017.

Despite Debtor's explanations as to what has caused the delinquency, there is no evidence on the record that the delinquency has been cured. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

21. [16-27235](#)-E-13 CAROLYN HEUSTESS
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-4-17 [[30](#)]

DEBTOR DISMISSED: 01/22/2017

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

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

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

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

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

22. [16-24437](#)-E-13 ANTHONY BARCELLOS
DPC-2 Matthew DeCaminada

MOTION TO DISMISS CASE
1-24-17 [[46](#)]

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

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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Anthony Barcellos (“Debtor”) is \$2,182.00 delinquent in plan payments (with another \$1,766.00 coming due before the hearing), which represents multiple months of the \$1,766.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 3, 2017. Dckt. 50. Debtor’s counsel reports that he has prepared a draft modified plan to address the Trustee’s grounds for dismissal. Counsel states that Debtor is collecting updated income and expense information to provide an accurate budget. Debtor believes that he will be able to make the payments under the First Modified Chapter 13 Plan and that a plan should be signed prior to the hearing date for this Motion.

A review of the docket shows that no Modified Plan or corresponding Motion to Confirm has been filed. Therefore, the delinquency is outstanding. 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>16-26438</u> -E-13 DPC-2	BILLY TENBERG Mark Briden	MOTION TO DISMISS CASE 1-25-17 [32]
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Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Motion is dismissed and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee having filed a “Notice of Dismissal” which the court construes as an *Ex Parte* Motion to Dismiss (in light of Debtor having filed an opposition) the pending Motion on February 17, 2017, Dckt. 47, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion

is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

24. [15-25641](#)-E-13 **FRANK DAVIS** **MOTION TO DISMISS CASE**
 DPC-1 **George Burke** **2-3-17 [41]**

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.

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)(C).

Local Rule 9014-1(f)(2) 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 February 3, 2017. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing -----.

The Motion to is granted, but the case is converted to one under Chapter 7 to allow the Trustee to administer assets of the bankruptcy estate.

The Trustee argues that Debtor is in material default under the Plan because a total of eighteen months have passed without Debtor moving to sell or refinance his property as called for in Section 6.01 of the Plan. Without such action, the Plan will take approximately 131 months to pay all filed claims. Debtor's plan calls for payments of \$700.00 per month for thirty-six months, and it pays the secured \$67,826.85 claim of Mortgage Lender Services Inc. in Class 2, priority claims to IRS and FTB in Class 5, and 100% dividend to general unsecured claims. The Trustee asserts that no motion to modify is pending, no motion to authorize a sale or refinance is pending, and the final payment of the Plan has not been paid, with the Plan now in the nineteenth month. Section 6.01 of the Plan makes that failure a breach of the Plan. Failure to provide for those claims by selling or refinancing property puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

A review of the docket shows that no Motion to Sell has been filed. Cause exists to dismiss this case.

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)).

In this case, Debtor lists owning the Washington Avenue Property, giving it a value in July 2015 of \$140,000.00. That property secures two debts. The first is the claim of David Mercuiro in the amount of \$67,850.26 (Proof of Claim No. 2). The second is the claim of the Internal Revenue Service in the amount of \$6,802.32 (Proof of Claim No. 1). Debtor has claimed an exemption of \$75,000.00 in the Property. If there has been (or is) a slight increase in value, a Trustee could sell the property, pay the two claims and preserve the Debtor's substantial exempt equity.

In light of Debtor not being able to prosecute a refinance or sale of the property during the 18 months of protection in this bankruptcy case, before turning her and the Property over to the pending foreclosure and loss of the property, it is in the interests of creditors and the estate, as well as the Debtor, to allow a trustee to consider the asset and ability to preserve its value.

The court shall issue a minute 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, with the case converted to one under Chapter 7.

25. [15-28042-E-13](#) **ALYCIA LARSON** **MOTION TO DISMISS CASE**
DPC-1 **Bruce Dwiggin** **1-23-17 [23]**

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 7, 2017, Dckt. 29; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 29, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

26. [15-23046](#)-E-13 STEVEN/MARGARET MOTION TO DISMISS CASE
DPC-2 LAWRENCE 1-25-17 [28]
Marc Carpenter

Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Motion is dismissed without prejudice and the bankruptcy case shall proceed in this court.

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 17, 2017, Dckt. 36, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 36, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: 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)(C).

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

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 1, 2017. 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). 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 offer 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. At the hearing -----.

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

The Trustee alleges that 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 that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor did not commence making plan payments and is \$230.00 delinquent in plan payments, which represents one month of the \$230.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

The Trustee argues that 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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee states that Debtor was not clear why relief was being sought. The Trustee states that Debtor referred to a balance of \$43,800.00, but does not disclose this balance; other debts add up to only \$1,575.00. The Trustee also alleges that Debtor may be in default on his \$393,200.00 mortgage to Caliber Home Loans and Trustee Corps.

Review of Court's Files

The court notes that this is Debtor's second recent case filing. The prior case, 16-28113, was filed on December 9, 2016, and dismissed on December 20, 2017. The case was dismissed for failure to filed documents. It appears that Debtor filed the documents, including a plan, in the prior case several days after it was dismissed. The filing of the current case followed the dismissal.

The Chapter 13 Plan filed in this case provides for a \$230.00 a month payment for thirty-six months. Plan, Dckt. 13. The various classes for payment of claims in the required plan form are left blank, with a "To the Court" typewritten page inserted between and two of the Chapter 13 Plan. On the inserted page it states:

- A. Debtor has \$230 a month of disposable income;
- B. Debtor seeks to make the \$230 a month payment for three years;
- C. How that money will be distributed to creditors is not provided;
- D. Debtor seeks to improve her credit, "with the option of financing my balance of \$43,800.00 in a 2nd deed of trust.

On Schedule A/B Debtor lists owing property on Oakenshield Circle (the "Property") with a value of \$393,000. Dckt. 14 at 1. On Schedule D Debtor lists Caliber Home Loans as having a \$393,200 claim secured by the Property, but states that the value of the Property as collateral is only \$279,000. *Id.* at 17.

On Schedule J, Debtor lists having a \$1,750.00 a month mortgage/rent payment and a \$200 a month property insurance payment. No amount is included for property taxes. *Id.* at 22.

While the Debtor may be attempting to avoid some negative financial consequence (such as a foreclosure) the court cannot identify what it is from the documents filed in this case or the Chapter 13 Plan. It appears that the "plan" is to put everyone's rights on hiatus for thirty-six months while the Debtor allows the situation to improve.

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

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

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

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

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

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) 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 February 7, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 offer 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. At the hearing -----.

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

The Trustee argues that 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). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not filed federal income tax returns for the 2010, 2011, 2012, 2013, and 2014 tax years. Claim No. 2 filed by the Franchise Tax Board indicates that Debtor has not filed tax returns from 2006, 2007, 2010, 2011, 2012, 2013, and 2014. Filing of the returns is required. 11 U.S.C. § 1308. Failure to file tax returns is grounds to dismiss the case. 11 U.S.C. § 1307(e).

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

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

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

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

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

29. [16-28049](#)-E-13 **ARMANDO RODRIGUEZ** **MOTION TO DISMISS CASE**
DPC-2 Pro Se 2-3-17 [\[32\]](#)

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

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)(C).

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

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 3, 2017. By the court's calculation, 19 days' notice was provided. 28 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). 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 offer 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. At the hearing -----.

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

The Trustee argues that Debtor did not commence making plan payments and is \$4,100.00 delinquent in plan payments, which represents one month of the \$4,100.00 plan payment. 11 U.S.C.

§ 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

The Trustee alleges that 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 that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee argues that 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—2015. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Review of Court's Files

The court notes that this is Debtor's second case filed in the past year. The prior case, No. 16-24340, was filed on July 1, 2016 and dismissed on September 9, 2016. That case was dismissed pursuant to an Order to Show Cause due to Debtor failing to make the filing fee installment payments. Such a dismissal is not (unfortunately) that unusual in a Chapter 13 case.

However, the court notes that the U.S. Trustee has commenced an Adversary Proceedings against the Debtor. Adv. Proc. 17-2018. The Complaint seeks injunctive relief prohibiting the Debtor from commencing another bankruptcy case for a period of two years, unless permission is obtained from the chief bankruptcy judge in the district in which Debtor desires to file a new case.

The allegations in the Complaint include not only this being Debtor's second bankruptcy case, but: (1) Debtor is married to Rose Rodriguez; (2) Ms. Rodriguez has filed at least 7 bankruptcy cases in this District since 2011; (3) that both Debtor and Ms. Rodriguez state they own the Woodgate Way Property; and (4) these nine bankruptcy cases are part of a scheme to abuse the bankruptcy laws.

It appears that all of Ms. Rodriguez's bankruptcy cases have been dismissed without any meaning prosecution (other than in the first case where Ms. Rodriguez made four monthly plan payments).

On Schedule A/B filed in Ms. Rodriguez's most recent case, she lists having an interest in the Woodgate Way Property as community property. 16-22254; Dckt. 28 at 3. On Schedule D, Ms. Rodriguez lists the Woodgate Way Property as being over encumbered by (\$77,000) as of the April 11, 2016 filing of her latest case. *Id.* at 11.

On his Schedule A/B in the current case, Debtor lists having an interest in the Woodgate Property as community property. Dckt. 1 at 11. On Schedule D, Debtor states that the Woodgate Property is over encumbered by (\$77,000).

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

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

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

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

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

30. [14-26551](#)-E-13 MARIA QUINTANA CAMACHO MOTION TO DISMISS CASE
DPC-4 Peter Macaluso 1-23-17 [[41](#)]

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 10, 2017, Dckt. 47; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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.

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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee argues that Sharon Phelps ("Debtor") did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 23, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Since the denial of Debtor's proposed plan, Debtor has filed with the court status updates of Debtor's commercial property. However, Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on February 8, 2017. Dckt. 125. Debtor states that it has been difficult to submit a plan because there have been zoning and code violation issues in regard to her commercial property in Orangevale, her major source of income. Debtor argues that she has maintained current payments of \$6,300.00 per month to the Trustee. Debtor alleges that the Sacramento County Planning Department Director has determined the RM-1 zoned portion of the property cannot be permitted as a stand alone parking area, and it would need to be rezoned to General Commercial or Commercial-Industrial zoning. Debtor's long term tenant is ready to fund a \$60,000.00 payoff of the secured loan against the property and make \$50,000.00 site improvements to conform the property with County codes and back taxes. Debtor also states she will be filing a motion for the refinance and proposed plan shortly.

A review of the docket shows that neither a Plan nor a corresponding Motion to Confirm has been proposed since the court denied the prior plan on February 25, 2016. *See* Dckt. 97. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

32.	<u>12-39954</u> -E-13 DPC-2	JOHN/MICHELLE PINEDA Peter Cianchetta	CONTINUED MOTION TO DISMISS CASE 12-21-16 [83]
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Final Ruling: No appearance at the February 22, 2017 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 December 21, 2016. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 29, 2017.

The Trustee argues that John Pineda, Jr. and Michelle Pineda (“Debtor”) are in material default under the Plan because the Plan will complete in seventy months. Debtor has not increased plan payments in accordance with notices of payment change. The monthly contract installment increased from \$1,939.11 to \$2,038.99 to \$2,067.57 without Debtor increasing plan payments. Section 2.08(b)(4)(I) of the Plan makes that failure a breach of the Plan. Failure to adjust plan payments according to a proper notice of payment change puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on January 4, 2017. Dckt. 87. Debtor states that an adversary proceeding has been filed against Wells Fargo Bank, N.A. One of the claims for relief is an objection to

Wells Fargo's claim. Debtor contends that Wells Fargo has issued new notices of mortgage payment change in attempts to circumvent Debtor's objection to claim while the adversary proceeding is ongoing.

Debtor asserts that the intent of Federal Rule of Bankruptcy Procedure § 3006 was to prevent the multiple filings of amendments to a Proof of Claim until the underlying objection has been resolved. Debtor argues that the Trustee should ignore any new notices of mortgage payment change until the adversary proceeding and objection to claim have been resolved.

Debtor requests that the court deny the Motion until the adversary proceeding is resolved and that the Trustee continue collecting plan payments of \$1,939.11. Alternatively, Debtor requests that the court continue the hearing on the Motion by twenty days if the court finds that Wells Fargo's demands for increased payment are appropriate.

JANUARY 18, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 22, 2017. Dckt. 89.

DISCUSSION

Debtor and Wells Fargo Bank, N.A. have stipulated to the filing of a Second Amended Complaint in Adversary Proceeding 16-02002. To the extent that Debtor and the Bank cannot reach an agreement on the computation of the current mortgage payment and the Adversary Proceeding or a claim objection must be prosecuted, Debtor can file a motion to modify the plan to build in a term providing for a plan payment for this secured claim (which may have to be designated as an "adequate protection payment" so as not to be misperceived as a modification of the secured claim).

The court shall issue a minute 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 March 29, 2017.

33. [11-48055](#)-E-13 CURTIS HEIGHER MOTION TO DISMISS CASE
DPC-7 Peter Cianchetta 1-23-17 [[146](#)]

Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Chapter 13 Trustee (“Movant”) filed pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 a Notice of Dismissal of the pending Motion to Dismiss this Chapter 13 Case (Dckt. 150). The Motion having been dismissed without prejudice by Movant, **the hearing is removed from the calendar.**

34. [16-22157](#)-E-13 ROBIN/THOMAS HARLAND MOTION TO DISMISS CASE
DPC-3 Stephen Reynolds 1-24-17 [[57](#)]

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.

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 24, 2017. By the court’s calculation, 29 days’ notice was provided. 28 days’ notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Robin Harland and Thomas Harland (“Debtor”) are \$3,602.11 delinquent in plan payments (with another \$3,300.00 coming due before the hearing), which represents multiple months of the \$3,300.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR’S OPPOSITION

Debtor filed an Opposition on February 8, 2017. Dckt. 61. Debtor states two additional payments have been made since the present motion was filed. One of the payments was reflected on the National Data Center site on February 2, 2017. The second payment is not reflected on the website yet.

Debtor understands that the monthly payment under the Plan is \$3,300.00 and not \$3,128.97. Therefore, Debtor believes they have time to pay the difference accrued so far.

Debtor's Plan provides for plan payments of \$3,105.00 a month for months 1-5 of the Plan, and then increasing the payments to \$3,300.00 for 55 months. Plan, Additional Provisions; Dckt. 37.

Debtor's opposition is that the default doesn't matter because the plan has so long to run the default will be paid in some unknown amounts at unspecified times.

Unfortunately for Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

35. [16-27559](#)-E-13 **FRANK FERREIRA**
Marc Caraska

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-19-17 [31]**

DEBTOR DISMISSED: 01/25/2017

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

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

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

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

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

36. [16-25462](#)-E-13 **DAN/MEGHAN MILLER** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **1-24-17 [24]**

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.

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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,300.00 delinquent in plan payments, which represents less than one month of the \$2,500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that 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 October 25, 2016. 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 a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 3, 2017. Dckt. 28. Debtor promises file, set, serve, and be current under an amended plan by the hearing. Unfortunately for Debtor, a review of the docket shows that no amended plan and motion to confirm have been filed.

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

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

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

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

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

37. [16-26163](#)-E-13 **RICHARD/TINA HOLLOWAY** **MOTION TO DISMISS CASE**
DPC-2 **Lucas Garcia** **1-24-17 [32]**

Final Ruling: No appearance at the February 22, 2017 hearing is required.

<p>The Motion is dismissed and the bankruptcy case shall proceed in this court.</p>
--

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 15, 2017, Dckt. 47, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 47, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [16-21365](#)-E-13 **DAVID/CONNIE KELLER** **MOTION TO DISMISS CASE**
DPC-1 **Peter Macaluso** **1-24-17 [32]**

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

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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Debtor is \$4,500.00 delinquent in plan payments (with another \$2,500.00 coming due before the hearing), which represents multiple months of the \$2,500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 3, 2017. Dckt. 36. Debtor promises to be current by the hearing. Unfortunately for Debtor, a promise to pay is not evidence of such.

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

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

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

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

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

39. [11-29166](#)-E-13 **MICHAEL/JENNIFER PETERS** **MOTION TO DISMISS CASE**
DPC-5 **Mark Wolff** **1-25-17 [[133](#)]**

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.

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 25, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee argues that Michael Peters and Jennifer Peters ("Debtor") is in material default under the Plan because the Plan will complete in seventy-eight months as opposed to sixty months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor has completed sixty-eight months in the Plan as of December 31, 2016. Approximately \$10,651.39 in secured, priority and delinquent monthly contract installment claims remains to be paid including the Trustee fees, which is \$2,522.39.

Debtor has paid \$233,580.00 to date. The last payment made was on January 13, 2017. The Trustee has a balance of \$2,348.28. Debtor's modified plan confirmed on April 6, 2013, called for \$227,085.00 in payments for sixty months. Debtor has paid \$211,780.00 and was \$15,305.00 delinquent after sixty months. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to complete the Plan timely puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 8, 2017. Dckt. 137. Debtor states that payments are being made under the Chapter 13 Plan, and some unanticipated expenses are the reason for not completing the Plan in the time frame anticipated. Debtor anticipated completing payments by paying \$4,000.00 per

month after the January 31, 2017 hearing. Debtor anticipates obtaining sufficient funds to complete the Plan at or prior to the hearing on February 22, 2017.

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. [15-23668-E-13](#) **JUAN/GENEVA GOMEZ** **MOTION TO DISMISS CASE**
DPC-2 **Mary Ellen Terranella** **1-24-17 [84]**

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.

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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Juan Gomez and Geneva Gomez ("Debtor") are \$5,380.00 delinquent in plan payments (with another \$2,690.00 coming due before the hearing), which represents multiple months of the \$2,690.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 8, 2017. Dckt. 88. Debtor states that as a real estate agent, it has not had a closing since October because the winter months are typically the slowest time in the real estate industry. However, Debtor has a closing on January 31, 2017, and another scheduled on February 10, 2017, and on February 17, 2017. Debtor is relying on the commissions from these closings to bring its plan payments current as well as make the February payment timely.

Unfortunately for Debtor, a promise to pay is not evidence of such. Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

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

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

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

41.	<u>16-26070</u> -E-13	STEPHANIE RUSCIGNO Peter Macaluso	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 1-17-17 <u>[81]</u>
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Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 19, 2017. 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: \$77.00 due on January 10, 2017.

<p>The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.</p>

The court's docket reflects that the default in payment that 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 bankruptcy case shall proceed in this court.

42. **16-26070-E-13** **STEPHANIE RUSCIGNO** **MOTION TO DISMISS CASE**
 DPC-1 **Peter Macaluso** **2-1-17 [97]**

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.

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)(C).

Local Rule 9014-1(f)(2) 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 February 1, 2017. 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). 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 offer 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. At the hearing -----.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$600.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that 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.

43.	<u>16-25173</u> -E-13 DPC-2	RONALD GRASSI Peter Cianchetta	MOTION TO DISMISS CASE 1-25-17 [49]
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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, Leave to Late File Granted

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 25, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving

party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee argues that 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 22, 2016. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor requested leave to file an untimely opposition, which the court granted. The opposition is stated to be:

"Debtor has filed and served a new plan and motion to confirm that takes into account all of his earning and does not rely on his exwife to help with the plan payment."

Opposition, Dckt. 59.

This bankruptcy case was filed on August 5, 2016. On September 19, 2016, Debtor filed a Motion to Confirm that Plan. On December 1, 2016, the court filed its order denying confirmation of that proposed plan.

The delay in the order denying confirmation because Debtor represented that he was working on a settlement with his ex-wife to fund the plan.

"Debtor filed a Reply on October 24, 2016. Dckt. 39. Debtor states that he has almost reached an agreement for a Stipulation in his family law case that would cause the codebtor ex-spouse to pay half of the Chapter 13 plan payments. Debtor asserts that he owes only income taxes, and they would be paid fully by the additional money available with the Stipulation. Debtor requests that the hearing on the Motion be continued to November 22, 2016."

Civil Minutes, p. 2; Dckt. 46. The November 22, 2016 hearing came, but no further pleadings were filed by Debtor. No information about the settlement or how Debtor would prosecute the case. The Debtor dropped off the legal radar.

In considering the Trustee's objection to confirmation, the court noted inconsistencies in the financial information provided by Debtor:

"The Trustees objections are well-taken. It is clear that Debtor has some very serious problems with this case and his credibility. While apparently attempting **to minimize the situation by saying he only owes some taxes**, the Internal Revenue Service has

filed **Proof of Claim No. 1 for \$132,439.12**, of which \$49,007.62 is asserted to be secured, \$69,072.83 as nondischargeable priority, and the balance as unsecured.

The court also notes that in reviewing Schedule I, though **Debtor has gross income of \$13,340 per month, his take-home income is only \$6,150 per month**. This more than \$7,000 a month reduction appears to occur for several reasons. Debtor purports to have **reasonable and necessary insurance expenses of \$2,000.00 per month**. Dckt. 9. On Schedule J, in addition to the college expenses, Debtor purports to have reasonable and **necessary transportation expenses of \$650.00 per month, \$350.00 per month for clothing, \$50 for charitable contributions, and \$300 for entertainment**. It appears that Debtor, wanting to receive all of the benefits of the extraordinary relief available under the Bankruptcy Code, does not want to accept the burden choosing to maintain his pre-bankruptcy lifestyle that has caused him to incur over \$130,000.00 of tax liabilities.

While the court respects the need for supporting the educational goals of ones children, it appears that **Debtor is happy to do so spending his creditors money to do that**. It is not the parental obligation of a creditor to fund the Debtors child's education. Again, **Debtor and Debtors counsel present** the court with **a situation where the filing of bankruptcy is not going to impinge on Debtors chosen lifestyle and hang the law because we don't like it**.

Additionally, while health is important, Debtor and Debtors counsel will have to provide solid, credible evidence why spending \$100 per month on gym membership is reasonable and necessary."

Id., p. 2-3.

The only opposition to this Motion to Dismiss is that now, on the eve of dismissal, Debtor will file another plan. In requesting leave to file an untimely opposition, the reason for being untimely in the opposition was:

"Debtors were not able to reply timely because Debtor was trying to secure additional plan funding from his exwife to pay the joint taxes, that funding did not materialize and debtor has adjusted expenses to afford the plan."

Cryptic and marginal at best as a good faith basis for cause to file an untimely pleading. But the court has so authorized.

Whether the case should be dismissed or not will turn on whether the court believes that the new proposed amended plan and supporting documents are presented in good faith and provide the court with credible testimony and other evidence. Beginning with the Plan, the basic terms are:

A. From the more than \$13,000 a month in income, Debtor is able to fund \$1,500.00 a month for plan payments for the first five months of the Plan.

1. It will then increase to \$2,500.00 a month for months 6 through 40, and

2. It will then increase to \$2,992.77 for the final 20 months.

B. For Classes of Claims Treatment:

1. Class 1.....No Claims
2. Class 2.....IRS \$49,007.62 claim, at 4% per annum interest, with a \$2,051.81/month payment
3. Class 3.....None
4. Class 4.....None
5. Class 5.....\$74,133.83 to be paid Through the Plan
 - a. Assuming it begins with Month 5, it would require \$1,327.89 a month payments.
6. Class 6.....None
7. Class 7.....100% Dividend of \$14,358.67.
8. Additional Provisions
 - a. All distributions to creditor are subordinate to payment of \$4,000.00 in fees to Debtor's counsel.

Amended Plan, Dckt. 56.

Using the Microsoft Excel Loan Amortization Program, repaying a \$49,007.62, with 4% interest, at the rate of \$2,051.81 a month repays that debt in twenty-five months.

In support of the Amended Plan, Debtor provides the following testimony under penalty of perjury:

- A. Debtor's monthly net income is.....\$7,265.76
- B. Debtor's monthly expenses are.....(\$4,760.00)
- C. Debtor's Net Disposable Income is.....\$2,505.76
- D. Debtor's monthly payment is.....\$1,500.00

Declaration, p.2; Dckt. 55. Debtor qualifies this by saying only that this is the information on his schedules, not that it is actually his income and expenses now six months later. No information is provided as to any expenses being reduced – the express reason given as part of the motion for leave to file a late opposition.

Though the court was concerned about Debtor's concept of what was "necessary" for his expenses while he creditors are being deferred in receiving payment (without interest) while Debtor (by his own calculation) is pocketing at least an extra \$1,000.00 a month of the Projected Net Disposable Income, Debtor's declaration is silent on the point.

Debtor does not address how he has necessary insurance payments of \$1,996 per month withheld from his \$13,340.17 a month salary. Debtor does not take into account that from his salary (while proposing

to force creditors to be delayed five years in getting paid, with no interest) he is putting away \$1,397.22 into his CalPers Pension (Schedule B, Dckt. 9 at 9).

The Plan proposed does not appear to be sufficiently in good faith to defeat this Motion to Dismiss. Rather, it appears to merely be a sham to delay either actually addressing the obligation of a Debtor or just getting more time to continue to divert part of Debtor's \$13,000 a month income within the protection of the Bankruptcy Code.

Under the proposed Amended Plan allows Debtor to pocket (using Debtor's Schedule I and J information) or under fund the Plan:

- A. Months 1-5.....\$5,000 (\$1,000 a month excess)
- B. Months 6-40.....\$ 0
- C. Months 41-60.....(\$10,000) (\$500 a month shortfall)

Debtor offers no evidence of how he will be able to increase the payments for the final 20 months of the Plan.

There does not appear to be a good faith plan filed with the court.

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.

Final Ruling: No appearance at the February 22, 2017 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 25, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee argues that Debtor is in material default under the Plan because the Plan will complete in sixty-seven months as opposed to sixty months. That exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). It appears the filed priority claims were \$1,933.41 greater than scheduled. Debtor was provided a Notice of Filed Claims on November 16, 2015, that indicated 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. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on February 2, 2017. Dckt. 37. Debtor does not oppose the Trustee's Motion to Dismiss the Case.

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

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

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

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

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

45. [16-27675-E-13](#) **DAWN BASURTO**
Pro Se

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-23-17 [38]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then 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 Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on January 25, 2017. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$76.00 due on January 17, 2017.

The hearing on the Order to Show Cause is continued to 10:00 a.m. on March 29, 2017.

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

UNITED STATES TRUSTEE'S OPPOSITION

The United States Trustee filed a Response on February 8, 2017, in which the U.S. Trustee requests that the case be held open long enough for the U.S. Trustee to investigate information received from David Cusick, the Chapter 13 Trustee, regarding involvement of an undisclosed bankruptcy petition preparer in this case. Dckt. 46. The U.S. Trustee states that there is no opposition to the eventual dismissal of this case, but the investigation into the matter reported by the Chapter 13 Trustee may cause the U.S. Trustee to file a motion under 11 U.S.C. § 110 or an adversary proceeding.

Given the information and argument presented by the United States Trustee, the court finds that not dismissing this case is reasonable at this time while the United States Trustee conducts an investigation. The hearing on this matter is continued to 10:00 a.m. on March 29, 2017.

The court shall issue a minute 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 hearing on the Order to Show Cause is continued to 10:00 a.m. on March 29, 2017.

46. [16-27675-E-13](#) **DAWN BASURTO** **MOTION TO DISMISS CASE**
DPC-2 **Pro Se** **1-24-17 [39]**

Final Ruling: No appearance at the February 22, 2017 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 (*pro se*) and Office of the United States Trustee on January 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

<p>The hearing on the Motion to Dismiss is continued to 10:00 a.m. on March 29, 2017.</p>
--

The Trustee argues that Debtor did not commence making plan payments and is \$300.00 delinquent in plan payments (with another \$300.00 coming due before the hearing), which represents one month of the \$300.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

Debtor has not provided the Trustee with proof of a Social Security Number. *See* 11 U.S.C. § 521(h)(2). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that 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—2015. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

UNITED STATES TRUSTEE'S RESPONSE

The United States Trustee filed a Response on February 8, 2017, in which the U.S. Trustee requests that the case be held open long enough for the U.S. Trustee to investigate information received from David Cusick, the Chapter 13 Trustee, regarding involvement of an undisclosed bankruptcy petition preparer in this case. Dckt. 46. The U.S. Trustee states that there is no opposition to the eventual dismissal of this case, but the investigation into the matter reported by the Chapter 13 Trustee may cause the U.S. Trustee to file a motion under 11 U.S.C. § 110 or an adversary proceeding.

Given the information and argument presented by the United States Trustee, the court finds that not dismissing this case is reasonable at this time while the United States Trustee conducts an investigation. The hearing on this matter is continued to 10:00 a.m. on March 29, 2017.

The court shall issue a minute 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 March 29, 2017.

47.	16-26177 -E-13 DPC-1	MICHAEL/PAULA NEHER Douglas Jacobs	MOTION TO DISMISS CASE 1-25-17 [30]
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Final Ruling: No appearance at the February 22, 2017 hearing is required.

<p>The Motion is dismissed and the bankruptcy case shall proceed in this court.</p>
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The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 17, 2017, Dckt. 41, no prejudice to the responding party appearing by the dismissal of the Motion, the Trustee having the right to request dismissal of the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, and the dismissal being consistent with the opposition filed by the Debtor; the Ex Parte

motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

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

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

48. [15-27379](#)-E-13 **MARCELLO FREIRE** **MOTION TO DISMISS CASE**
 DPC-2 **Mohammad Mokarram** **1-24-17 [70]**

DEBTOR DISMISSED: 02/07/2017

Final Ruling: No appearance at the February 22, 2017 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: 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.

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 25, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Trustee seeks dismissal of the case on the basis that Jesus Cardenas, Sr. and Jessica Cardenas ("Debtor") are \$3,909.00 delinquent in plan payments (with another \$4,478.35 coming due before the hearing), which represents less than one month of the \$4,478.35 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor is in material default under the Plan because the Plan will complete in sixty-eight months as opposed to sixty months proposed. That exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor's monthly plan payment net of Trustee's fees and the Monthly Contract Installment is \$1,006.83. The remaining amount to be paid is approximately \$48,637.00, including interest. The Trustee has a balance on hand of \$4,255.71. To date, Debtor has completed twenty-three months of the plan and has forty-five months left. Section 5.03 of the Plan makes that failure a breach of the Plan in addition to violating the Bankruptcy Code. Failure to complete the Plan timely puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S RESPONSE

Debtor filed a Response on February 8, 2017. Dckt. 87. Debtor promises to be current by the hearing and to file a modified plan before the hearing to correct the issue of the overextended plan. Unfortunately for Debtor, a promise to pay is not evidence of such, and a review of the docket shows that no modified plan has been filed.

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

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

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

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

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

50. [16-27680-E-13](#) **DARREN BOWIE**
DPC-1 **Stephen Reynolds**

MOTION TO DISMISS CASE
1-25-17 [12]

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.

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 25, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<p>The Motion to Dismiss is denied without prejudice, and the case shall proceed in this court.</p>
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The Trustee argues that Darren Bowie ("Debtor") did not commence making plan payments and is \$180.00 delinquent in plan payments, which represents multiple months of the \$90.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on February 8, 2017. Dckt. 16. Debtor states that he made the two payments required under the Plan and filed an account statement in support of the present opposition, filed as Exhibit 1. *See* Dckt. 17.

Exhibit 1 is an Account Ledger from the National Data Center for Debtor's case. The ledger shows that two payments of \$90.00 have been made, one on February 1, 2017, and the other on February 3, 2017. Debtor has provided sufficient evidence that the Trustee's ground for dismissal based upon delinquency has been cured, and Debtor has become current with plan payments. Cause does not exist to dismiss this case. The Motion is denied, and the case shall proceed in this court.

The court shall issue a minute 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, and the case shall proceed in this court.

51.	<u>16-27288-E-13</u> DPC-2	SHANE/JESSICA BARNER Pro Se	MOTION TO DISMISS CASE 1-11-17 [<u>15</u>]
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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.

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 11, 2017. By the court's calculation, 42 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). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Trustee alleges that 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 that is prejudicial to creditors and is cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor did not commence making plan payments and is \$333.72 delinquent in plan payments (with another \$333.72 coming due before the hearing), which represents one month of the \$333.72 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

Debtor has not provided the Trustee with employer payment advices for the period of sixty days preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that 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). That is unreasonable delay that 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.

Final Ruling: No appearance at the February 22, 2017 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 24, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,200.00 delinquent in plan payments (with another \$1,950.00 coming due before the hearing), which represents multiple months of the \$1,950.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that 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 20, 2016. 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 a plan for confirmation. That is unreasonable delay that 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.

53. [13-29395-E-13](#) **FRANK/GRACE MURPHY** **MOTION TO DISMISS CASE**
 DPC-6 **Pauldeep Bains** **1-23-17 [97]**

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.

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 23, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

<p>The Motion to Dismiss is granted, and the case is dismissed.</p>
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The Trustee seeks dismissal of the case on the basis that Frank Murphy and Grace Murphy ("Debtor") are \$2,182.00 delinquent in plan payments (with another \$1,091.00 coming due before the hearing), which represents multiple months of the \$1,091.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor filed a Response on February 8, 2017. Dckt. 101. Debtor claims to have inconsistent month-to-month income because of construction work. Debtor believes no modification of the plan is necessary to meet current plan payments because Debtor recently completed some jobs. Debtor claims to have paid the Trustee \$1,100.00 on January 24, 2017. Debtor expects to send an additional \$2,173.00 on or before February 17, 2017, which will bring the Plan current through January 25, 2017. Additionally, Debtor plans to send the February payment of \$1,091.00 prior to the end of February 2017. Unfortunately for Debtor, a promise to pay is not evidence of such. Delinquency exists in this case still.

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.

54.	<u>16-24396</u> -E-13 DPC-1	ROBERT MACBRIDE Pro Se	CONTINUED MOTION TO DISMISS CASE 10-17-16 [55]
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No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 17, 2016. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is xxxxx.

The Trustee argues that Debtor did not commence making plan payments and is \$5,742.00 delinquent in plan payments (with another \$2,871.00 coming due before the hearing), which represents multiple months of the \$2,871.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

DEBTOR'S OPPOSITION

Robert MacBride (“Debtor”) filed an Opposition to the Trustee’s Motion on November 2, 2016. Dckt. 59. Debtor states that the Trustee does not have an obligation to make any adequate protection payments to a creditor until a proof of claim has been filed and that the Trustee is required to pay the arrears owed to the creditor holding a secured claim before he can make payments to either the priority unsecured creditor or the unsecured creditor, which would mean that there has been no unreasonable delay to those creditors.

NOVEMBER 16, 2016 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on December 6, 2016, to allow Debtor to become current with plan payments and to address any other defaults.

DECEMBER 6, 2016 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on January 18, 2017, because Debtor asserted that \$8,531.00 was paid to the Trustee on December 3, 2016 (although the payment was not documented), and to allow Debtor to seek counsel.

TRUSTEE’S SUPPLEMENTAL DECLARATION

The Trustee filed a Supplemental Declaration on January 4, 2017. Dckt. 80. The Trustee reports that Debtor remains \$5,724.00 delinquent in plan payments. The Trustee reports that a “triple payment” of \$8,631.00 was made on December 7, 2016. The Trustee also reports that no new plan is pending before the court after the last one was denied on December 6, 2016. *See* Dckt. 78.

JANUARY 18, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. because Debtor reported that the delinquency had been cured on January 17, 2017, but the Trustee was not able to confirm receipt of any such payment. Dckt. 89.

DISCUSSION

Nothing further has been filed since the January 18, 2017 hearing. At the hearing, the Trustee reported that the delinquency **has/has** not been cured.

Nevertheless, Debtor does not appear to have taken the court’s advice that bankruptcy counsel is necessary in this case because a review of the docket shows that no substitution of attorney has been filed with the court.

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

55. **16-27697-E-13** **BRIAN OKAMOTO** **MOTION TO DISMISS CASE**
 DPC-2 **Peter Macaluso** **1-25-17 [38]**

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 8, 2017, Dckt. 46; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 46, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

56. [16-25998-E-13](#) **GENEVIEVE BALDINI**
Scott Shumaker

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
1-11-17 [30]

Final Ruling: No appearance at the February 22, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on January 13, 2017. 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: \$77.00 due on January 6, 2017.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that 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 bankruptcy case shall proceed in this court.

57. [13-32199](#)-E-13 DEWITT/JEANNE MARPLE MOTION TO DISMISS CASE
DPC-1 Eamonn Foster 1-23-17 [47]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the February 22, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on February 6, 2017, Dckt. 59; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 59, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

58. [16-27632-E-13](#) **CHARLES JACKSON AND** **CONTINUED OBJECTION TO**
DPC-1 **PAMELA JACKSON** **CONFIRMATION OF PLAN BY DAVID P.**
Pauldeep Bains **CUSICK**
1-11-17 [\[32\]](#)

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

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)(C).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor’s Attorney on January 11, 2017. By the court’s calculation, 34 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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.

The Objection to Confirmation of Plan is sustained.
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David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that Debtor is delinquent \$6,163.08 in plan payments.

DEBTOR’S RESPONSE

Charles Jackson, Jr. and Pamela Jackson (“Debtor”) filed a Response on February 1, 2107. Dckt. 40. Debtor’s counsel has been unable to get a hold of Debtor since the Meeting of Creditors. Debtor’s attorney requests that the Objection be overruled while he tries to contact Debtor to cure the delinquency prior to the hearing.

FEBRUARY 14, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 22, 2017 (specially set with the court’s dismissal calendar) to afford counsel time to contact Debtor. Dckt. 50.

DISCUSSION

The Trustee's objection is well-taken. The Trustee asserts that Debtor is \$6,163.08 delinquent in plan payments, which represents one month of the \$6,163.08 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

For the February 14, 2017 hearing, the court accepted Debtor's counsel's request for a continuance so that he could continue to work diligently to get his client to respond to his communications concerning this case. The court recalls these two debtors from their motion to extend the stay in this case—it having been filed within a year of the dismissal of the prior bankruptcy case on November 10, 2016. In discussing the “good faith of Debtor” in filing this case, the court's ruling includes the following:

This is not a case where Debtor is a borderline, poverty-level income Debtor. **The gross monthly income for Debtor is \$15,066.55.** Schedule I, Dckt. 13. This is consistent with the income in Debtors prior case. Debtor defaulted in the \$6,600.00+ per month payments in the prior case beginning in August 2016. Debtor filed the current case on November 11, 2016. **Though over \$19,000.00 of projected disposable income went into Debtors hands in August through the November 11th filing, none of it is credibly accounted for.** On Schedule B, Debtor reports having only \$1,100.00 in bank accounts. Dckt. 13 at 6.

A declaration stating during our last case we had several issues with our car that cost lots of money (apparently more than \$19,000) is not sufficient to rebut the presumption of bad faith. In many respects, it strengthens the presumption of bad faith. It may be that the money was lost to gambling. Not a good answer, but one that could show human error. Or the \$19,000.00 may be hidden with a family member or friend, showing more bad faith. **The court has not been presented with credible evidence of where the money, more than \$19,000.00 has gone over a three-month period.**

Civil Minutes, Dckt. 29.

The court also notes that the Trustee has filed a motion to dismiss (which includes conversion) of this case. It appears that a Chapter 7 Trustee may have significant non-exempt assets to sell. Such may include fractional interests in \$1,050,000 of life insurance policies, several vehicles, retirement investments that may not be necessary for \$15,000 a month income individuals, and unaccounted for monies from the prior bankruptcy case.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

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

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

The Objection to the Chapter 13 Plan filed by the 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 Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.