

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

**July 9, 2014 at 10:00 a.m.**

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1.	<a href="#">12-22801</a> -C-13    SUK KIM TSB-2                    C. Anthony Hughes	CONTINUED MOTION TO DISMISS CASE 4-28-14 [ <a href="#">107</a> ]
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Local Rule 9014-1(f)(1) Motion - Opposition Filed.

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

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

**The court's tentative decision is to continue the hearing on the Motion to Dismiss to October 23, 2014 at 10:00 a.m.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

**MAY 28, 2014 HEARING**

The court continued the hearing on this matter from May 28, 2014 to this date to allow Debtor to work with his attorney to reassess his income and expenses, in order to set aside the funds so that Debtor can afford his increased mortgage payments and properly fund his Chapter 13 Plan. Civil Minutes, Dckt. No. 113.

**REVIEW OF MOTION**

The Trustee moves for an order dismissing the case pursuant to 11 U.S.C. § 1307 because the Debtor is in material default pursuant to § 5.03 of the plan, which provides that if Debtor defaults under the plan, or if the plan will not complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion pursuant to Local Bankruptcy Rule 9014-1.

According to the Trustee's calculations, the Plan will complete in 71 months as opposed to the 60 months proposed. This exceeds the maximum time

allowed under 11 U.S.C. § 1322(d). The plan payment is \$1,910.00 monthly, or \$1,814.50 net of the Trustee's fees. After payment of the Class 1 monthly contract installment payment of \$1,214.83, \$599.67 remains to pay all other creditors. Remaining secured claims, interest, and unsecured claims to be paid through the plan total \$27,016.76. Thus, 46 months remain in the plan (\$27,016.76 divided by \$599.67). Debtor has completed 25 months, thus the total term of the plan is 71 months.

Debtor was provided a Notice of Filed Claims of September 26, 2012, Dckt. No. 50, which indicated that a motion to modify was required, Page 2, Item (f), if the Notice of Filed Claims includes allowed claims which will prevent the Chapter 13 plan from being timely completed.

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

Debtor responds by acknowledging that the plan is overextended. Dckt. No. 111. Debtor states that the reason why the plan will not complete on time is because the mortgage company increased the mortgage payment from \$1,145.22 to \$1,214.83. As a result of the increased mortgage payment, the other creditors will not be getting the necessary monthly distribution.

Debtor states that in order to accommodate this change, he will need to either increase his income, or decrease his expenses (or a combination of both) in order to properly fund the plan. The debtor is working with his attorney to provide updated income and expenses to show that this is feasible, but because of the limited time has not been able to put everything together by this time. Debtor requests to have the moving date continued in order to fix this problem, and adds that he is current on his plan payments under the confirmed Chapter 13 Plan.

#### **FURTHER RESPONSE TO TRUSTEE'S MOTION TO DISMISS**

Debtor states that after he and his counsel met and reviewed his income and expenses, that he has suffered a drop in income and has only been able to make the Trustee payment by borrowing from friends and family. Debtor will not be able to apply a "quick fix" by increasing his income or decreasing his expenses since he does not have the disposable monthly income in order to make the Trustee's payment. Dckt. No. 121.

However, on June 24, 2014, the Debtor received a loan modification agreement from his lender. The terms of the loan modification require the Debtor to sign and return the loan modification packet by July 4, 2014. The terms of the loan modification will eliminate all arrears and reduce the debtor's monthly mortgage payment to \$765.34. Payment of this amount will begin on August 1, 2014. Based on the terms of the loan modification, the Debtor's mortgage payment will be reduced from \$1,214.83 to \$765.34 (a savings of \$449.49/month). In addition, the arrears payment of \$288.46 will be eliminated altogether. Thus, the Debtor will be saving \$737.95 per month (which will offset the Debtor's decreased income).

The Debtor's attorney instructed the Debtor to sign and return the document to his lender so that they may sign the document and provide it to counsel to file with the court for approval. The Opposition states that modified plan will be filed in conjunction with the loan modification. Because these events are recent, the Debtor may not be able to get the fully signed loan modification back from the lender and be able to file for Court approval for the loan modification as well as a modified plan in time for the Court

hearing.

The court will continue the Motion to Dismiss to [date] at [time] to permit Debtor to bring a Motion to Approve a Loan Modification entered with Debtor's mortgage lender, and to provide evidence that he will be current on his Chapter 13 plan payments after his loan modification is signed and approved.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is continued to **October 23, 2014 at 10:00 a.m.**

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 the Office of the United States Trustee on June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 11 Trustee moves for an order dismissing this case, pursuant to 11 U.S.C. § 1307(c), on the basis that the Debtor is in material default under the Plan. The Debtor has not provided for the priority claim of the Franchise Tax Board, Proof of Claim No. 8, in the amount of \$3,273.97, Section 2.13 of the Plan. The Debtor was provided a Notice of Filed Claims on June 4, 2013, Dckt. No. 37, which listed this claim on Page 5 as priority, and not provided for in the plan and indicated that a motion to modify was required, Page 2, Item (f).

#### **RESPONSE BY DEBTOR**

Debtor responds by stating that she will be filing a new plan prior to the above hearing date to address the Trustee's concerns. Dckt. No. 46. Thus, Debtor asks the court to deny the Trustee's Motion to Dismiss the Case.

A review of the docket, shows that Debtor has filed a Modified plan to provide for the priority claim of the Franchise Tax Board. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 48, 50. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

Trustee seeks an order dismissing the Debtors' Chapter 13 case, on the basis that the Debtors are in material default with respect of the terms of their confirmed plan under 11 U.S.C. § 1307(c)(6). To date, the Debtors have paid a total of \$6,000.00, with the last payment received on May 16, 2014. The Trustee shows that a total of \$233,315.00 is due, so the Debtors are delinquent \$227,315.00 in plan payments. Debtors' monthly payment is \$500.00.

Prior to the hearing on this matter, another payment of \$500.00 will come due. As a result, the Debtor will need to pay \$227,815.00 in order to bring this plan current by the date of hearing. Debtors must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on the Motion to Dismiss.

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

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

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

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

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

4. [14-21304](#)-C-13 CHARLIE/LAURA BALANGUE MOTION TO DISMISS CASE  
DPC-1 Peter G. Macaluso 6-6-14 [[36](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c), on the basis that Debtors are causing an unreasonable delay that is prejudicial to creditors. The Trustee asserts that Debtors have not prosecuted their case, and are delinquent in plan payments.

The Debtors' Motion to Confirm, PGM-1, was withdrawn on April 2, 2014. Trustee states that Debtors have not filed an Amended Plan and set it for confirmation.

Additionally, the Debtors are \$6,200 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$3,200.00 is due on June 25, 2014. The Debtors have paid \$3,400 into the plan to date. Debtors must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on the Motion to Dismiss.

#### **OPPOSITION BY DEBTORS**

Debtors respond by stating that an Amended Plan has been filed, served, and set for hearing on August 5, 2014, and that Debtors are current under the terms of the proposed plan. Dckt. No. 47.

A review of the docket shows that an Amended Plan was filed on June 19, 2014, Dckt. No. 44. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 40, 42. The Motion appears to comply with Federal Rule of Bankruptcy

Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

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

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied.



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 June 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee argues that the Debtor's case should be dismissed for two reasons. First, Debtor is \$3,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,500 is due on June 25, 2014. The case was filed on November 7, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$5,026.71 into the plan to date.

Second, Debtor's Motion to Confirm, MOH-2, was heard and denied at the hearing held on April 29, 2014. Civil Minutes, Dckt. No. 50. No subsequent amended plan or Motion to Confirm has been filed to date.

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

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted

and the case is dismissed.

6. [13-20412](#)-C-13 DANIEL/CHRISTINA MOTION TO DISMISS CASE  
DPC-1 ROBERTSON 6-9-14 [[41](#)]  
David P. Ritzinger

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court to dismiss this case pursuant to 11 U.S.C. § 1307 on the basis that Debtors are in material default on payments to their plan, and that Debtors cannot make the payments under 11 U.S.C. § 1325(a)(6).

Trustee states that the Debtors are in material default pursuant to Section 2.08(b)(I) of the plan, which provides, "If the holder of a Class I claim gives Debtor and Trustee notice of a payment change in accordance with Federal Rule of Bankruptcy Procedure 3002.1(b), Debtor shall adjust the payment accordingly." Class 1 creditor U.S. Bank National Association filed with the court on February 26, 2014, a Notice of Mortgage Payment Change. The notice listed the new total payment as \$2,652.63, effective on April 1, 2014. The Debtors did not increase the plan payment due April 25, 2014 for this increase. Debtors' Plan confirmed on May 20, 2013 that the mortgage payment is \$1,921.59, and the plan payment is \$2,441.43. Debtors' plan payment is not sufficient to fund the plan.

Additionally, it appears that Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$662.88 under the confirmed plan. Payments totaling \$39,062.88 have become due under the plan. Debtors have paid a total of \$38,400.00 with the last payment of \$2,400.00 posted on May 28, 2014.

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

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

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

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

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

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

Correct Notice Provided. The Notice of Intent to Enter the Chapter 13 Discharge states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and the Chapter 13 Trustee on April 15, 2014. By the court's calculation, days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Notice of Intent to Enter the Chapter 13 Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The United States Trustee and Chapter 13 Trustee in this case having filed an opposition, the court will address the merits of the motion. 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).

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

With some exceptions, 11 U.S.C. § 1328 permits the discharge of debts provided for in the Plan or disallowed under 11 U.S.C. § 502 after the completion of plan payments. The Chapter 13 Trustee's final report was filed on March 11, 2014. See Fed. R. Bankr. P. 5009. The order approving final report and discharging the trustee was entered on April 14, 2014 (Dckt. No. 160). The entry of an order approving the final report is evidence that the estate has been fully administered. See *In re Avery*, 272 B.R. 718, 729 (Bankr. E.D. Cal. 2002).

The Notice of Intent, Dckt. No. 161, indicates that both Debtors certify that they:

1. do not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions in real property, personal property, or a cooperative used as a residence or claimed as a homestead, or in a burial plot that exceed in the aggregate \$146,450, or certified that exemptions in excess of \$146,450 are reasonably necessary for the support of the Debtor or the Debtor's dependents;

2. do not have any delinquent domestic support obligations,

3. have completed a financial management course and filed the certificate with the court,

4. have not received a discharge in a case under Chapter 7, 11, or 12 during the four-year period prior to filing of this case or a discharge

under a Chapter 13 case during the two-year period prior to filing of this case,

#### **OBJECTION OF UNITED STATES TRUSTEE**

The United States Trustee objects to the Debtors' Certification regarding the receipt of prior discharge and objects to the entry of a Chapter 13 discharge in this case, on the basis that Debtors have already received a Chapter 7 discharge in this case. Dckt. No. 162.

The case was filed as a voluntary Chapter 7 case on July 21, 2011. The Debtors received a Chapter 7 discharge on November 10, 2011. Dckt. No. 11. On December 9, 2012, the Debtors filed a request for conversion of the case to a Chapter 13 case. Dckt. No. 42. On December 11, 2012, the court converted the case to Chapter 13. Dckt. No. 47.

On August 20, 2013, the Debtors, who had received a substantial sum of money from a settlement of a class action claim, brought a motion to amend their plan to provide for 100% payment of all allowed claims. Dckt. No. 138. The modified plan was confirmed on October 8, 2013. Order, Dckt. No. 148.

On February 13, 2014, the court issued a "Notice to Debtor of Completed Plan Payments and of Obligation to File Documents." Dckt. No. 151. Among the documents to be filed by the Debtors was a § 1328 Certificate regarding, among other things, prior bankruptcy discharges.

Unfortunately, Part B of that Certificate, titled "Prior Chapter 7, 11, or 12 Bankruptcy Discharge," does not offer a box to check which reflects the Debtors' circumstances. **It only offers two choices--to certify that the Debtors either have, or have not, received a discharge in a Chapter 7, 11 or 12 bankruptcy case filed within four years "prior to filing this case."** (11 U.S.C. § 727(a)(8) does not require that it be in a "prior" case.) Debtors checked the first box, indicating that they had not received a discharge in a prior case. While true, the statement did not alert the court to the fact that they had already received a Chapter 7 discharge in this same case.

The United States Trustee argues that the Debtors, having already received a Chapter 7 discharge in the present case, should not be granted a Chapter 13 discharge.

#### **OBJECTION BY THE CHAPTER 13 TRUSTEE**

The Chapter 13 Trustee agrees that the Debtors should not receive a discharge in the Chapter 13 case, as they previously received a discharge in Chapter 8 of this case prior to conversion. Dckt. No. 168.

Section 727(a)(8) provides that a debtor cannot receive a discharge if the debtors has previously obtained a discharge in a case commenced within eight years of the current case.

It appears that Debtors obtained a discharge in their Chapter 7 case, before their case was converted to one under Chapter 13 of the Bankruptcy Code, on November 10, 2011 (Dckt. No. 28), which falls within eight years from the filing of their current case. Debtors' case was converted on December 11, 2012. Dckt. No. 47. Therefore, the Debtors are

not eligible for a discharge in their current Chapter 13 case.

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

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

The Motion for Entry of Discharge filed by the Debtors 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 Clerk of Court shall not enter the Debtors' discharge in this case, and Debtors, Keith and Patricia Paulsen, are denied a second discharge in their current case, Case No. 11-37913-C-13, pursuant to 11 U.S.C. § 727(a)(8).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 30, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) as the Debtor is in material default with respect to the terms of the confirmed plan.

To date, Debtor has paid a total of \$210,910.68, with the last payment received on May 22, 2014. Trustee shows a total of \$228,664.56 is due, so Debtor is delinquent in \$17,753.88 in plan payments. Debtor's monthly payment is \$8,876.94.

Prior to the hearing in this matter, another payment of \$8,866.94 will come due. As a result, Debtor will need to pay \$26,630.82, in order to bring this plan current by the date of the hearing. The Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on the Motion to Dismiss.

#### **OPPOSITION BY DEBTOR**

Debtor responds by acknowledging that at the time the Motion to Dismiss was filed, Debtor was \$17,753.88 behind in plan payments. This is only 2 payments of each of the \$8,876.94 monthly payments. The payment for June will be due at the time of the hearing as well. Dckt. No. 163.

Debtor states that he runs a Mexican restaurant in Chico, and that he has "good months an [sic] bad months at the restaurant," and has taken efforts to stabilize his income so as to be more regular in his plan payments. Debtor assures that he will bring this matter current, and will no longer be in arrears under the current plan, and that as of the day of the hearing, Debtor will be current.

As of July 2, 2014 hearing, however, nothing further has been filed

on the docket by the Debtor or Trustee, indicating that Debtor is now current on payments called for by the confirmed plan. Cause exists to dismiss the case; the Motion is granted, and the Debtor's case is dismissed.

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

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

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

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

9.	<a href="#"><u>11-35717</u></a> -C-13	ANDREW/DONNA KASSAY	MOTION TO DISMISS CASE
	DPC-1	Amy L. Spencer	5-29-14 [ <a href="#"><u>34</u></a> ]

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



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 June 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee seeks an order dismissing this case pursuant to 11 U.S.C. § 1307, on the basis that the Debtor is in material default with respect to the terms of the confirmed plan. To date, the Debtor has paid a total of \$10,050.60, with the last payment received on May 13, 2014. The Trustee shows a total of \$11,256.00 is due, so the Debtor is delinquent \$1,205.40 in plan payments. Debtor's monthly payment is \$402.00.

Prior to the hearing in this matter, another payment of \$402.00 will come due. As a result, Debtor will need to pay \$1,607.40, in order to bring this plan current by the date of the hearing. The Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on the Motion to Dismiss.

#### **OPPOSITION BY DEBTOR**

Debtor responds by stating that she will file a Motion to Confirm the Third Modified Plan to cure the delinquent plan payments, and become current under the proposed Modified Plan. Dckt. No. 61.

A review of the docket, however, shows that Debtor has not filed a proposed modified plan. Neither Trustee nor Debtor have filed anything further indicating that Debtor has become current under the terms of the confirmed plan under 11 U.S.C. § 1307(c). Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

11. [14-23926](#)-C-13 DANIEL/MARY GUTTEREZ MOTION TO DISMISS CASE  
DPC-2 Peter L. Cianchetta 6-2-14 [[24](#)]

The Trustee filed a "Notice of Withdrawal" on July 2, 2014, Dckt. 28, stating that the Motion to Dismiss was withdrawn. The court construes this "Notice" as an election to dismiss the Motion to Dismiss the Chapter 13 Case without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Motion having been dismissed without prejudice, the matter is removed from the calendar.**

**Final Ruling: No appearance at the July 9, 2014 hearing is required.**  
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The Chapter 13 Trustee having filed a Notice of Withdrawal on July 2, 2014, Dckt. 43, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal as an *ex parte* motion to dismiss the motion to dismiss without prejudice, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7041, the dismissal consistent with the opposition filed by the Debtors, the *ex parte* motion is granted, the Trustee's motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

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

The Motion to Dismiss the Chapter 13 case filed by Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 9014, Dckt. 43, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

13. [14-24928](#)-C-13 DONALD MARCROFT  
Pro Se

AMENDED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
6-17-14 [[24](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 9, 2014). The court docket reflects that on June 30, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

14. [14-25129](#)-C-13 NYIDRA WALKER  
Justin K. Kuney

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-19-14 [[19](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 16, 2014). The court docket reflects that on June 25, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

15. [14-21931](#)-C-13 AMRIK/DALJIT CHEEMA  
DPC-1 Scott A. CoBen

MOTION TO CONVERT OR DISMISS  
CASE  
6-6-14 [[36](#)]

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing the case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtors are delinquent \$350.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$850.00 is due on June 25, 2014. The case was filed on April 3, 2014. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13.

In the Motion Trustee asserts that Debtors have paid \$500.00 into the Plan to date.

#### **OPPOSITION BY DEBTORS**

Debtors respond by stating that they are current on all plan payments under the presently filed Chapter 13 Plan. Debtors' current Chapter 13 plan calls for plan payments of \$850.00 beginning May 25, 2014.

On June 6, 2014, the Chapter 13 Trustee posted a payment of \$500.00 made via cashier's check. On June 13, 2014, the Chapter 13 Trustee posted a payment of \$350.00 made via a cashier's check. Debtors have made payments totaling \$850.00 to the Chapter 13 Trustee and are now current under the current Chapter 13 plan. Debtors and their counsel have also prepared a First Amended Chapter 13 Plan and anticipate it being filed prior to the hearing on the instant Motion to Dismiss.

Debtors argue that failure to timely tender their Chapter 13 plan payment was caused out of clerical error on the part of the Debtors rather than an inability to make their plan payments. Debtors erroneously submitted a cashier's check to the Chapter 13 trustee exhibiting a signature of

"signature on file." This is an unacceptable form of payment with the Chapter 13 trustee's office. Moving forward, Debtors will tender payment with an appropriate signature.

**Memorandum/Letter filed by Joint Debtor Alex Young**

Debtor files a document that does not constitute an adequate declaration under the requirements of 28 U.S.C. § 1746, which requires that a statement by the declarant attesting that the information is true and correct. However, the court waives this defect in considering the Debtor's testimony (which does not appear to have been prepared with the assistance of Debtor's attorney), that Debtor will have "everything straight in July," and that Debtor will be current in his payments.

Although the Opposition states that the Debtor has made payments to cure the delinquency of his plan, Debtor has not provided evidence or receipts showing that the payments totaling \$850.00 were made. In the absence of competent evidence indicating that the required payments have been made, and that Debtor is now current under the terms of the Amended Plan, cause exists to dismiss the case. The Motion is granted and the case is dismissed.

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

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

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

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



Local Rule 9014-1(f)(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 June 3, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to continue the Motion to Dismiss to 10:00 a.m. on September 4, 2014.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the following grounds:

1. Debtor filed this case on March 7, 2014, and has not made a payment to the Trustee to date. The Plan calls for Debtors' funds held in the trust account of attorney David D. Carrico, approximately \$70,000.00, to be relinquished to the custody of the Trustee and be used to cure her mortgage arrears, which are estimated at \$58,000.00 and owed to Select Portfolio Servicing. The Plan does not indicate when the payment will be made. Two payments have come due since the filing of the case on March 7, 2014.
2. The case was filed on March 7, 2014, and Debtor has yet to confirm a Plan. The Trustee's Objection to Confirmation, TSB-1, was heard and sustained at the hearing on May 20, 2014, and the Debtor has not amended the Plan and set a confirmation hearing to date.
3. Debtor has \$70,000.00 in non-exempt equity, which is from the approximate amount of Debtor's funds held in a trust account of attorney David D. Carrico listed on Schedule B, that may be available to creditors in a Chapter 7 proceeding.

#### **OPPOSITION BY DEBTOR**

Debtor responds as follows:

1. Debtor's attorney acknowledges the deficiencies of the Amended chapter 13 Plan, and will be filing a Second Amended Chapter 13 Plan on June 24, 2014 to be heard on August 5, 2014, that proposes to pay

her ongoing mortgage payments, and all of the unsecured creditors that are expected to file timely claims a 100% dividend. The Trustee has had available the \$42,985.57 turned over to him by attorney David Carrico from which ongoing mortgage payments can be paid. Debtor states that her Second Amended Chapter 13 Plan provides for additional monthly payments of \$2,710.00 on June 25, 2014, and thereafter monthly, for the duration of the 36-month plan.

2. This case was filed on March 7, 2014, and the Trustee's objection was heard and sustained on May 20, 2014. Debtors' Amended Chapter 13 Plan and Motion to Confirm were filed two weeks later. The Opposition states that Debtor is 74 years old, no longer drives, and is not "usually available" to go to her attorney's office to sign documents.
3. The Opposition further states that Debtor's attorney acknowledges that some portion of the \$42,985.57 in the possession of the Trustee (not \$70,000.00 held by Mr. Carrico) is not exempt. Debtor's case was filed to avert a scheduled foreclosure sale of the home in which she and her "four disabled downs children" reside. Her Second Amended Plan proposes to pay in full all of her unsecured creditors that timely file claims.
4. Debtor's attorney states that the Plan should "actually be able to conclude in 36 months."
5. Debtor's Second Amended Plan proposes ongoing payments of \$2,710.00 on June 25, 2014, and monthly thereafter. The Opposition states that Debtor will be able to afford this because in addition to the \$1,433.00 in projected disposable income listed on her Schedule J, after paying her scheduled expenses, which is derived from her wages for caring for her four children, she has available approximately \$3,122.10 monthly in Social Security benefits that are paid to her and the children. This amount is listed in her Statement of Financial Affairs. The Opposition states that Debtor can afford this plan payment.
6. The Opposition states that Debtor will file a declaration in support of the newly proposed plan.

#### **REPLY BY TRUSTEE**

Trustee states that Debtor's counsel has requested that the matter be continued as he will be unavailable due to a seven day bicycle ride. While the Trustee does not ask the court to continue the matter, the Trustee will not oppose a continuance if the court deems it appropriate.

#### **Procedural History**

The case was filed on March 7, 2014, and a Notice of Incomplete Filing was issued on that date, while a Plan was filed and no Form 22c, Schedule I or J was filed. A Notice of Intent to Dismiss was issued on March 11, 2014, stating that Debtor had until March 21, 2014 to file the remaining documents. Debtor filed the documents on March 20, 2014. Dckt. No. 21.

The Trustee objected to confirmation on April 16, 2014, which was sustained on May 20, 2014. The Trustee moved to dismiss or convert this case due the unreasonable delay caused by Debtor, and paid the required fee for the motion on June 3, 2014. Debtor had signed an amended plan on June 2, 2014, but that was filed after the Motion to Dismiss or Convert, Dckt. No. 47. After the Trustee's Supplement to this Motion was filed, Dckt. No. 54, a second amended plan was filed on June 23, 2014. Dckt. No. 63.

### **Delinquency**

Trustee had asked the court to find a delay in part because of no payments made into the plan, where two had come due as of June 3, 2014, the date this motion was filed. The original plan, called for no set monthly payment, but for a payment of approximately \$70,000.00 from funds held in the trust account of attorney David P. Carrico.

Trustee admits to the receipt of \$42,985.57 on June 4, 2014, and \$1,500.00 on June 24, 2014. The Debtor may be delinquent under the original plan, although the plan lacks any detail as to when the payments are to be made. The Debtor filed an amended plan on June 23, 2014, Dckt. No. 63, which calls in Additional Provisions, Page 7, for a monthly payment of \$2,710.00 on June 25, 2014, and thereafter, as well as \$42,985.57. Debtor is currently delinquent by \$1,210.00.

### **Unreasonable Delay in Filing a New Plan**

Debtor appears to have prepared and was ready to file an amended plan within 14 days of the hearing denying confirmation of the first plan. While the Trustee acknowledged that this would normally considered prompt, the Trustee maintains that the plans are part of a pattern of unreasonably delay. The Debtor is delinquent under the second amended plan, which calls for a monthly contract installment to Select Portfolio Servicing of \$3,351.29, Dckt. No. 63 at 2, with a monthly plan payment by the Debtor of only \$2,710.00 and apparently a draw from the \$42,985.57 plan payment, with no cure or proposed treatment of the \$58,000.00 of arrears on this claim, previously admitted to by the Debtor in the first amended plan and original plan. Dckt. Nos. 48 and 8.

### **Non-Exempt Equity**

Debtor has claimed no exemption in the funds paid to the Trustee, where \$42,985.57 appears to have been scheduled as Item No. 35 on Schedule B.

### **Plan Exceeds 60 Months**

While Debtor now claims the Amended Plan will complete in 60 months, the inability to explain the status of the mortgage arrears admitted to earlier appears to show it will likely exceed 60 months, assuming claims are filed. While the Bar Date has almost passed and no claim has been filed, the Trustee objects as the Trustee must assume the claim will be filed for arrears, otherwise the treatment of the claim would not be inside the plan.

### **Ability to Make Payments**

While Debtor's Counsel appears to be under the impression that Schedule I, when it asks for "List all other income regularly received: 8e,

Social Security, Dckt. No. 21 at 4, can be answered as \$0.00 without committing perjury when the Debtor now claims they received social security income, the Trustee cannot understand the argument.

### **Declaration**

Based on the obvious discrepancy between Schedule I and the Debtor's declaration now filed, Dckt. No. 61, the Trustee believes that the court should not find the declaration credible without an evidentiary hearing.

### **RESPONSE BY DEBTOR TO TRUSTEE'S REPLY**

#### **Delinquency**

Debtor responds that the initial premise of this case was the servicing of the Debtor's ongoing mortgage payments of \$3,351.29 would be paid from the \$42,985.57 in the possession of the Trustee. Debtor's attorney apparently states that he was uncertain how Debtor could confirm a plan given the estimated mortgage arrears of \$58,000 even with the \$3,351.29 available from the Trustee. There is the possibility of a confirmable plan given that the first mortgage holder has not filed a proof of claim, with a deadline of July 9, 2014. The Debtor will be able to confirm a plan that pays 100% of her unsecured claim holders that actually file claims, as well as well as service her ongoing mortgage because of the total of the unsecured claims as of July 3, 2014, is only \$2,175.01.

Debtor's most recent plan calls for ongoing monthly payments of \$2,710.00 to fund this 100% plan, beginning on June 25, 2014-\$1,500 of which has been paid and the delinquency of \$1,200 is acknowledged. Debtor's attorney's intention is for Debtor's money order for \$1,210 to be sent to Trustee by the hearing so that Debtor can be current.

#### **Delay in Filing New Plan**

The initial amended plan was filed within 13 days of the objection to confirmation being sustained on May 20, 2014 of Debtor's original Plan, the same day the Motion to Dismiss was filed. Debtor's attorney asserts that he did not file it in response to the Motion to Dismiss, but rather when it occurred to him that a plan would actually be confirmable if the first mortgage holder did not file their claim by the July 9, 2014 deadline.

#### **Non-Exempt Equity**

The Response states that some portion of the \$42,985.57 is actually exempt, but has not been claimed because Debtor's desire is that those funds will be 100% available to fund her Chapter 13 plan so that she will be able to remain in her home.

#### **Plan Duration**

The Response argues that the Second Amended Plan will finish in 36 months if the mortgage claim is not filed by July 9, 2014.

#### **Ability to Make Plan Payments**

Debtor's attorney states that Debtor's \$2,122.10 in social security

benefits for herself and her three children is accounted for on page 1 of the Statement of financial Affairs. Debtor's attorney also states that he furnished the required documents to the Trustee for the First Meeting of Creditor, and provided copies of the pages from Debtor's Social Security statements showing the amounts Debtor and her children were receiving. Debtor's attorney believes that the case of *In re Welsh*, 2013 U.S. App. LEXIS 5880 (9<sup>th</sup> Circuit, 2013) indicates that social security income no longer has to be factored into the ability of Debtor to fund a plan payment on her Schedule I.

#### **CONTINUANCE**

Debtor's attorney states that he will be absent from his office for one week from July 7 to July 11, 2014, and requests that this matter be continued to the next law and motion calendar on July 22, 2014, when he will be available to speak on the issues raised by the Trustee. By that time, Debtor and Debtor's counsel will know for certain if the mortgage holder has filed a claim for the arrearage by the claims deadline. Dckt. No. 68.

The court continues the hearing on the Motion to Dismiss, to allow Debtor's attorney to appear at the July 22, 2014 hearing, which will permit Debtor and Debtor's counsel to address the feasibility of the Amended Plan and the Debtor's ability to fund the Second Amended Plan (and file a Third Amended Plan, if necessary), in the event that Debtor's mortgage lender does file a Proof of Claim providing for the arrearage on Debtor's note.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is continued to 10:00 a.m. on September 4, 2014.

18. [14-21340](#)-C-13 NATALIE PELTON  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
5-19-14 [[34](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 14, 2014). The court docket reflects that on May 28, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

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 June 2, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves to dismiss the Debtor's case on the following grounds:

1. Debtor is \$1,650.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$825.00 is due on June 25, 2014. Debtor has paid \$825.00 into the plan to date.
2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor has not provided proof of her Social Security Numbers to the Trustee to establish her identity pursuant to the request of the United States Trustee and the Chapter 13 Trustee under 11 U.S.C. § 521(h)(2).
4. The Trustee's Objection to Confirmation, TSB-1, was heard and sustained at the hearing on April 29, 2014. To date, Debtor has not filed an Amended Plan and set it for confirmation.

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

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

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

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

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



Local Rule 9014-1(f)(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 June 3, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves to dismiss the Debtor's case on the basis that the Debtor is \$5,062.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,531.00 is due on June 25, 2014. This case was filed on March, 11, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid \$0.00 into the Plan to date.

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. [12-23646](#)-C-13 MARYLOU/CHARLES HODGE MOTION TO DISMISS CASE  
DPC-2 John R. Harrison 6-11-14 [[60](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee moves to dismiss this case pursuant to 11 U.S.C. § 1307 because the Debtors are in material default with the confirmed plan. To date, Debtor has paid a total of \$16,250.00, with the last payment received on May 5, 2014. The Trustee shows a total of \$17,550.00 is due, so the Debtors are delinquent \$1,300 in plan payments. Prior to the hearing on this matter, another payment of \$650.00 will. Debtor will need to pay \$1,950.00 in order to bring this plan current by the date of the hearing.

#### **REPLY TO MOTION TO DISMISS**

Debtors respond by stating that they paid \$1,300.00 to the Trustee on June 25, 2014. Dckt. No. 64. Debtors do not provide receipts or a proof of payment showing that this payment was tendered to the Trustee. Debtors state that they will be current on plan payments by the time of the hearing on this matter.

As of July 2, 2014, the Debtors have not filed any competent and credible evidence showing that they have paid the full \$1,950.00 to become current under the terms of the confirmed plan.

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

Local Rule 9014-1(f)(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 June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves to dismiss the case on the basis that the debtor is in material default pursuant to §5.03 of the plan, which provides, "If Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to the Trustee's calculations the Plan will complete in 209 months as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Plan payment is \$685.00 or \$659.65 after Trustee fees. The Debtor's monthly payment of \$685.00 after Trustee Fees is approximately \$659.65. The monthly Class 1 contract installment is \$585.61, leaving \$74.04 for all other claims. \$13,994.56 remains on the mortgage arrears claim and \$78.30 remains to be paid to unsecured creditors. Thus,  $\$14,072.86 / \$74.04 = 191$  months remaining. Debtor has completed 18 months of the plan.

#### **REPLY BY DEBTOR**

Debtor states that prior to the hearing on the Motion, Debtor shall file a first modified plan to cure the material default under the plan. Dckt. No. 121. A review of the docket shows that Debtor has not, however, filed a modified plan for confirmation, causing unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1)

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

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

holding that:

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

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

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

Local Rule 9014-1(f)(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 June 2, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves for an order under 11 U.S.C. § 1307 dismissing this case for two reasons. First, Debtor is \$444.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$444.00 is due on June 5, 2014. Debtor has paid \$0.00 into the plan to date.

Second, Debtor has not filed all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. § 1308 and 1325(a)(9). On April 24, 2014, the Internal Revenue Service filed Proof of Claim No. 9, which indicates on Page 3 that Debtor has not filed returns during the 4-year period preceding the filing of the petition, specifically for the years of 2012 and 2013.

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.

24. [14-21154](#)-C-13 VASILIIY LAZARESKU ORDER TO SHOW CAUSE - FAILURE  
Thru #25 Pro Se TO PAY FEES  
6-12-14 [[50](#)]

**Tentative Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on June 9, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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 June 10, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the following grounds:

1. Debtor is \$200.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on June 25, 2014. The case was filed on February 7, 2014. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid \$100.00 into the Plan to date.
2. The Trustee's Objection to Confirmation, NLE-1, was sustained by the court at the hearing held on April 22, 2014, Dckt. No. 38. Debtor has not filed an amended plan and set it for confirmation.
3. The Trustee's Objection to Debtor's Claim of Exemptions, NLE-2, was sustained by the court at the hearing held on April 29, 2014, Dckt. No. 41. Debtor has not resolved the claim of exemptions.

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

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

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



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

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

26. [14-25255](#)-C-13 SHARON HOLLEY ORDER TO SHOW CAUSE - FAILURE  
Michael O'Dowd Hays TO PAY FEES  
6-23-14 [[29](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 18, 2014). The court docket reflects that on June 23, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

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 June 2, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) for two reasons. First, the Debtor's Motion to Confirm, SJS-3 was heard and denied on April 22, 2014. To date, Debtor has not filed an Amended Plan and set it for confirmation.

Second, Debtor is \$1,050.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,050.00 is due on June 25, 2014. The Debtor has paid \$2,100.00 into the plan to date.

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

#### **OPPOSITION BY DEBTOR**

Debtor states in his opposition that he and his counsel have been meeting and conferring on the events that transpired following the conversion of the Debtor's Chapter 7 bankruptcy case to one under Chapter 13. Debtor and his counsel have been working on preparing a feasible Chapter 13 Plan, and state that they shall have a feasible Chapter 13 plan filed on or before June 25, 2015, and set it for a confirmation hearing. Dckt. No. 73.

Debtor desires to remain in his Chapter 13 bankruptcy and to obtain his discharge.

A review of the docket shows, however, that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

Local Rule 9014-1(f)(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 June 11, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

To date, Debtor has paid a total of \$19,494.00, with the last payment received on January 2, 2014. Trustee shows a total of \$23,826.00 is due; Debtor is delinquent \$4,332.00 in plan payments. Debtor's monthly payment is \$722.00.

Prior to the hearing on this matter, another payment of \$722.00 will come due. As a result, Debtor will need to pay \$5,054.00 in order to bring this plan current by the date of the hearing.

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. [14-23660](#)-C-13 GENTRY/MARIA LONG MOTION TO DISMISS CASE  
TSB-1 Pro Se 6-20-14 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (pro se) and Office of the United States Trustee on June 20, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) for two reasons. First, Debtors are \$394.95 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$735.35 is due on June 25, 2014. Debtors have paid \$340.30 in to the plan to date.

Second, Debtors' Motion to Confirm, GML-1, was heard and denied at the hearing on June 10, 2014. To date, Debtors have not filed an Amended Plan and set it for confirmation.

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. [14-23562](#)-C-13 ROTONDA LLOPIS  
[14-2099](#)  
LLOPIS V. U.S. BANK NATIONAL  
ASSOCIATION

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
4-11-14 [[1](#)]

**Continued to from June 25, 2014 to this hearing date to be considered in conjunction with the Motion to Dismiss Case, filed by the Chapter 13 Trustee, Item No. 31 on this Calendar, Dckt. No. 37.**

Complaint for Fraud, Injunctive Relief, and Stipulation to Quiet Title filed by *Pro Se* Plaintiff.

Motion to Dismiss filed on June 2, 2014. Debtor has not responded. The court's decision is to grant the Motion to Dismiss, DPC-1.

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 June 2, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the following grounds:

1. Debtor did not appear at the First Meeting of Creditors held on May 22, 2014, the Meeting has been continued to July 17, 2014 at 10:30 am.
2. Debtor has not provided Trustee with proof of income for 60 days preceeding the filing of her bankruptcy under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor has not noticed all interested parties of the Chapter 13 Plan, and set a confirmation hearing to date. The plan was filed on May 5, 2014, after the Trustee issued the 341 notice on April 24, 2014.
5. Debtor is delinquent \$50.00 in plan payments to the Trustee to date, and the next scheduled payment of \$50.00 is due on June 25, 2014. The Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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



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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtors are in material default pursuant to §6.03 of the Plan, which provides that if "Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to Trustee's calculations, the Plan will complete in 45 months, as opposed to the proposed 36 months. It appears that the mortgage arrears claim was \$2,831.88 greater than scheduled.

The Debtors were provided a Notice of Filed Claims on June 18, 2013, Dckt. No. 64, which indicated that a motion to modify was required. Page 2, Item (f), the Notice of Filed Claims includes allowed claims which will prevent the Chapter 13 Plan from being completed timely.

#### **RESPONSE BY DEBTORS**

Debtors respond by stating that the Plan provided for the payment of arrears on the Debtors' mortgage in Class 1 of the Plan, with an arrearage listed at \$2,640.09. The mortgage creditor filed a Proof of Claim, showing the arrears amount to be greater than that listed by Debtors. Dckt. No. 74.

Debtors acknowledge that based on the foregoing, the plan will not complete in 36 months as originally contemplated by the Debtors due to the greater amount that needs to be paid to the mortgage company. The Trustee calculates that an additional 9 months will be necessary to complete the plan.

The court will not modify the terms of the Plan by way of an order

on the present Motion to dismiss, but will continue the Motion to Dismiss to allow Debtors to submit a modified plan and Motion to Confirm to increase the plan term from 36 months to 45 months. The court will therefore continue this matter, Trustee's Motion to Dismiss, to [date] and [time], to permit the Debtors to file a newly modified plan.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is continued to **[date] at [time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtors are \$1,810.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,810.00 is due on June 25, 2013. The case was filed on April 9, 2014. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtors have paid \$0.00 into the Plan to date.

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

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

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

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

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

34. [14-25267](#)-C-13 VICKI LEWIS  
DPC-1 Peter G. Macaluso  
**CASE DISMISSED 6/19/14**

MOTION TO DISMISS CASE  
6-18-14 [[31](#)]

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

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

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

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

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

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 June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to continue the Motion to Dismiss to 2:00 pm at August 5, 2014 at 2:00 pm.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtor is in material default. Debtor did not provide for the priority amount of the claim of the Employment Development Department (Court Claim No. 14), in the amount of \$3,909.86, § 2.13 of the Plan makes this failure a breach of plan.

The Debtor was provided a Notice of Filed Claims on August 5, 2013, Dckt. No. 27, which listed this claim on Page 5 as priority, and not provided for in the plan and indicated that a motion to modify was required. Page 2, Item (f).

#### **OPPOSITION TO MOTION TO DISMISS**

Debtor responds to the Motion to Dismiss on grounds that he has filed an Objection to Claim No. 13-1. Debtor requests that the Motion be denied, or alternatively continued to the date that the Objection is heard.

The court will continue the Motion to Dismiss to 2:00 pm at August 4, 2014, to be heard in conjunction with Debtor's Objection to the Proof of Claim filed by the Employment Development Department.

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 continued to 2:00 pm on August 5, 2013.

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 June 11, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtor is \$1,020.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$685.00 is due on June 25, 2014. The case was filed on March 3, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13.

Additionally, the Trustee's Objection to Confirmation, TSB-1, was heard and sustained at the hearing held on May 6, 2014, Dckt. No. 30. No subsequent amended plan or Motion to Confirm has been filed to date.

#### **OPPOSITION TO MOTION TO DISMISS**

Debtor responds by stating that he will be current under the proposed plan, or request an additional five days to convert to a Chapter 7 case. Dckt. No. 46.

A review of the docket shows that nothing further has been filed to indicate that Debtor has become current in payments under the plan. Debtor has not filed a Motion to Convert the Chapter 13 Case to one under Chapter 7 of the Bankruptcy Code, Debtor's request for an "additional five (5) days to convert" is unclear to the court; the court is uncertain whether Debtor is requesting an additional five days after the hearing on the Motion to Dismiss to file a Motion to Convert or an additional five days from the filing of the Opposition to make such a request, and whether Debtor wishes to continue the present Motion so that Debtor can file a Motion to Convert.

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

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

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

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

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



Local Rule 9014-1(f)(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 June 18, 2014. By the court's calculation, xx days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtor has not filed a Chapter 13 Plan, and has not filed the following documents:

- Form 22C
- Schedule(s): A-J
- Statement of Financial Affairs
- Statistical Summary
- Summary of Schedules

When schedules and statements are not filed by the 45 day of a case, the case is automatically dismissed on the 46 day. See 11 U.S.C. § 521(i)(1). In this case, the 45 day was July 1, 2014. The schedules and statements were not filed on or before July 1, 2014.

Thus, the petition is dismissed under the automatic dismissal provisions of 11 U.S.C. § 521(i)(1). The motion is granted and the case is dismissed.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*) and Office of the United States Trustee on June 23, 2014. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the following grounds:

1. Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on June 19, 2014. The Meeting has been continued to September 11, 2014 at 10:30 am. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).
2. Debtors did not report filing their previous case, Case No. 13-23372 on their petition.
3. The Debtors have not provided the Trustee with employer payment advices or other proof of income for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtors have not provided either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

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

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

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

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

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

Local Rule 9014-1(f)(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 June 9, 2014. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the following grounds:

1. Debtor did not provide for the priority claim of the Franchise Tax Board (Court Claim No. 7), in the amount of \$1,327.79. Section 2.13 of the Plan makes this a breach of the Plan. Debtor was provided a Notice of Filed Claims on July 16, 2013, Dckt. No. 35, which listed this claim on Page 4 as priority, and not provided for in the plan and indicated that a Motion to Modify was required, Page 2, Item (f).
2. Debtor is in material default pursuant to §6.03 of the Plan, which provides that if "Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to Trustee's calculations, the Plan will complete in 68 months, as opposed to the proposed 60 months. This span of time exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Filed claims were greater than those scheduled by the Debtor.

3. It appears that the Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$4,845.00 under the terms of the plan confirmed on February 28, 2013. \$80,750.00 has become due under the plan. Debtor has paid a total of \$75,905.00 with the last payment posted on May 27, 2014.

RESPONSE BY DEBTOR

Debtor states that as of the date of the Motion, Debtor is still one payment behind. Debtor claims that the reason for the delinquency is a decrease in the Debtor's business income last year that "caught up to her."

Debtor states, however, that her business picking up and that she can modify her plan and make up the missed payment. Debtor asserts that prior to the Court hearing on July 9, 2014, the Debtor and her counsel will be working on and filing a new plan that will take care of the missed payment. This plan will be served on all creditors and a confirmation hearing will be set.

**On July 1, the Debtor filed a First Modified Chapter 13 Plan, which proposes to pay one payment of \$4,750.00 and \$4,909.02 for 42 months for a plan duration of 60 months.** The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 45, 48. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

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

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is denied.

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 June 6, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that Debtor's plan was filed on March 5, 2014, but has not been served on all interested parties, and no motion to confirm is pending. The petition was filed on January 15, 2014, with no plan. The Trustee caused the court to issue the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines on February 3, 2014.

A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors, unless the court determines that it should be held sooner under 11 U.S.C. § 1324. The first meeting of creditors was held and concluded on March 27, 2014, so the ability to set a hearing on the motion to confirm within 45 days will have elapsed by the date of hearing on this motion.

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

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

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

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

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

41. [13-36084](#)-C-13    LORENZO/CONSUELO LLAMAS    MOTION TO DISMISS CASE  
DPC-1    Thomas O. Gillis    6-2-14 [[46](#)]

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

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

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

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

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