

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

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

1.	<u>09-39001</u> -E-13	ANN HARVELL	MOTION TO DISMISS CASE
	DPC-1	Scott J. Sagaria	5-29-14 [<u>62</u>]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

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

2. [10-53003](#)-E-13 SCOTT/ANA PANNETTA
DPC-1 Kristy A. Hernandez

CONTINUED MOTION TO DISMISS
CASE
2-27-14 [[53](#)]

CONT. FROM 4-16-14

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

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

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - 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 February 27, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted.

JULY 9, 2014 HEARING

As discussed below, the court continued the hearing to afford the various attorneys with connections to the Debtors appear to address who is Debtors counsel in this case. On June 10, 2014 a substitution of attorney was filed, with the court entering an order thereon. Dckts. 83, 84. Kristy Hernandez is not the attorney of record for the Debtors.

Debtors have not filed any supplemental declarations or pleadings. The Debtor is now \$2,391.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

PRIOR HEARING

Delinquent

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,011.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

CONTINUANCE

The court continued the hearing to Dismiss to allow Debtor to file and serve supplemental declaration and pleadings and to give notice of the hearing date on Debtor's Motion to Confirm Chapter 13 Plan.

Though dismissal of this case would be appropriate, it is not clear which attorneys bear the responsibility for the dismissal. When the case was filed Lucas Garcia, of the Litchney Law Firm, P.C., signed the Petition and was counsel for the Debtors. Dckt. 1.

On February 27, 2014, the Chapter 13 Trustee filed his motion to dismiss due to the Debtors being \$1,011.00 delinquent in plan payments. This precipitated the filing of a First Modified Plan and Motion to Confirm by the Debtors - for which Ronald Holland, of the Hernandez Law Group, Inc. appear as counsel for the Debtors. No substitution of attorneys has been filed or motion to substitute counsel if a substitution could not be executed.

Before the court dismisses this case, the various attorneys must appear in court to confirm (1) who is the attorney for Debtors, and (2) how it has come about that the attorney of record has disappeared and a non-attorney of record appears in the case. The court orders the following attorneys to appear at the continued hearing to address the above issues.

Lucas Garcia, Esq.
Sarah Litchney, Esq.
Ronald Holland, Esq.
Kristy Hernandez, Esq.

The court notes on June 10, 2014, Counsel Kristy Hernandez filed a substitute of attorney. Dckt. 83.

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 is granted and the case is dismissed.

3. [14-23504-E-13](#) SHERMAN/MAXINE THOMPSON
DPC-2 Scott J. Sagaria

MOTION TO DISMISS CASE AS TO
SHERMAN THOMPSON
6-11-14 [[39](#)]

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is to grant the Motion to Dismiss the case for Sherman Thompson, and allow the co-debtor to proceed.

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 causing an unreasonable delay that is prejudicial to creditors.

This motion is brought to seek the dismissal of the case as to Sherman Thompson under Federal Rule of Bankruptcy Procedure 1016. The Trustee states that Sherman Thompson may be incompetent. Mr. Thompson appeared at the First Meeting of Creditors held May 15, 2014 and when asked if he knew why he was at the First Meeting he stated "no." Mrs. Thompson testified under penalty of perjury that she believed that Mr. Thompson has had an onset of dementia.

Trustee states that it is not clear from the record whether or not Mr. Thompson was competent at the time of filing. In the event that Mr. Thompson was not competent, unless a motion is brought to appoint a guardian ad litem or next friend who can ratify the filing, the bankruptcy of Mr. Thompson was not filed by a person with the legal capacity to file the proceeding. Federal Rule of Bankruptcy Procedure 1004.1 provides the

procedure to file a petition for an incompetent person, and that procedure was not followed.

Where the voluntary petition was filed jointly and Mr. Thompson does not appear to be a necessary party for the relief, the Trustee seeks to Dismiss the Debtor, Sherman Thompson, as he does not appear to be competent pursuant to Federal Rule of Bankruptcy Procedure 1016.

NON-OPPOSITION

Sherman and Maxine Thompson ("Debtors"), have submitted their Statement of Non-Opposition to the Chapter 13 Trustee's Motion to Dismiss which was filed on June 11, 2014 to individually dismiss debtor Sherman Thompson. (Dckt. 43).

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor is incompetent or passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991).

Federal Rule of Bankruptcy Procedure 1004.1 provides the procedure to file a petition for an incompetent person. NO such procedure was followed in this case. Debtors through their attorney, provide a statement of non-opposition to the dismissal of Debtor Sherman Thompson, individually.

Based on the foregoing, the Trustee's Motion is granted and Sherman Thompson is dismissed from 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.

The Motion to Dismiss 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 as to Sherman Thompson.

4. [09-45405](#)-E-13 SAM/ANGELA CRUZ
DPC-2 Aaron C. Koenig

MOTION TO DISMISS CASE
5-30-14 [[86](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on July 2, 2014, Dckt. 95, 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. 95, 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.

5. [09-22607](#)-E-13 LOIS GRAHAM
DPC-1 Peter G. Macaluso

MOTION TO DISMISS CASE
5-29-14 [[105](#)]

No Tentative Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The court's decision is to xxxx the Motion and xxxxx.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,500.00 delinquent in plan payments, which represents multiple months of the \$375.00 plan payment. At the date of trial the Debtor will be an additional payment delinquent making the total amount due \$1,875.00. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Counsel for Debtor responds, stating that Debtor passed away on or about June 11, 2014. Debtor was in the 64th month of the plan and had a minimal balance of \$470.32 remaining which the family has agreed to pay off before the hearing.

TRUSTEE'S RESPONSE

Trustee responds, stating he searched online and found the obituary for Louis L. Graham. The Trustee states that the Debtor does not address a life insurance policy expense of \$62.27, which remains property of the estate. Trustee states that unless Counsel immediately reveals more information regarding the life insurance policy, this matter should be converted to a Chapter 7.

JULY 9, 2014 HEARING

XXXX

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 xxxx.

6. [14-20809-E-13](#) HENRY/LINDA GUISANDE MOTION TO DISMISS CASE
DPC-1 W. Scott de Bie 5-29-14 [[33](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Debtor's Attorney, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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). Upon review of the Motion and supporting pleadings and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$80,000.00 delinquent in plan payments, which represents multiple months of the \$854.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

OPPOSITION

Henry and Linda Guisande ("Debtors") have filed a proposed modified plan which is scheduled for hearing on July 29, 2014. The Debtors also acknowledge their delinquency and claim to be able to maintain payments under new plan.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 37, 39. 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.

7. [14-22510-E-13](#) ALFRED/MONICA SALAZAR
Aaron C. Koenig

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-16-14 [[61](#)]**

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

The Order to Show Cause was served by the Clerk of the Court on Alfred Jose Salazar and Monica Vanessa Salazar, "Debtor," Trustee, and other parties in interest on June 16, 2014. The court computes that 23 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 11, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

8.	<u>11-27611</u> -E-13 CHRISTOPHER/SHAWN DPC-1 GEORGIOU Mark A. Wolff	MOTION TO DISMISS CASE 6-11-14 [73]
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Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$23,737.75 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

9. 14-22811-E-13 ADELAIDA VASQUEZ MOTION TO DISMISS CASE
DPC-1 Pro Se 6-3-14 [28]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) 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.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,600.00 delinquent in plan payments, which represents multiple months of the \$800.00 plan payment. 11 U.S.C. §1307(c)(4) permits

the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

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

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

10. [14-23012](#)-E-13 CHE PEREZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-29-14 [[19](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Che Perez, "Debtor," Trustee, and other parties in interest on May 29, 2014.

The court computes that 41 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on May 27, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$30.00.

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

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

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

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

11.	12-41916 -E-13	LAMONTE/CAROL LOVE	MOTION TO DISMISS CASE
	DPC-1	James L. Keenan	6-9-14 [20]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee

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

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

12.	<u>14-24616</u> -E-13	NICOLE GOLDEN AND STEPHEN ALTER John G. Downing	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-14-14 [<u>11</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Nicole Golden and Stephen Alter, "Debtor," Trustee, and other parties in interest on May 14, 2014. The court computes that 56 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$281.00 due on April 30, 2014).

The court's tentative decision is to discharge the Order to Show Cause.

The court's docket reflects that the default has been cured.

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

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

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

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

13. [12-35521](#)-E-13 CHRISTOPHER DEAN MOTION TO DISMISS CASE
DPC-1 Peter G. Macaluso 6-10-14 [[228](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,510.00 delinquent in plan payments, which represents multiple months of the \$2,200.00 plan payment. An additional payment was due on June 25, 2014 and no payment has been made making the total amount delinquent \$9,710.00. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 6, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

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

14. [13-34223-E-13](#) NAOMI LEBUS MOTION TO DISMISS CASE
DPC-1 William F. Abbott 6-3-14 [[58](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Trustee asserts that the Debtor has yet to file a motion to confirm the Plan. The Plan was filed on April 16, 2014. Therefore, the Debtor must file a motion to confirm the Plan. See Local Bankr. R. 3015-1(c)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

DEBTOR'S OPPOSITION

Debtor states that a Motion for Confirmation of the plan has been filed and a hearing set for August 19, 2014.

DISCUSSION

A review of the Motion to Confirm First Amended Plan, shows the

Debtor has not complied with Federal Rule of Bankruptcy Procedure 9013, as it fails to state with particularity the grounds for relief.

Furthermore, Debtors have failed to meet their burden of proving the requirements of confirmation. See *Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Such evidence, typically in the form of a Debtors' Declaration proving the elements of 11 U.S.C. §1325(a), is required. See Local Bankr. R. 9014-1(d)(6).

Additionally, the court has reviewed the First Amended Plan filed on April 16, 2014. There appear to be several issues that render the plan unconfirmable. First, it appears Debtor does not properly fund the plan. Debtor provides that plan payments will total \$187.29 in Section 1.01 of the proposed plan. However, Debtor provides for First Bank Mortgage in the amounts of \$1,800 and \$700 for a total of \$2,500 to be paid through the plan. Debtor also lists in Class 5 a priority tax claim to the IRS for \$4,444.52. Debtor does not provide sufficient plan payment to provide for the payments to the listed Creditors.

The court notes that the plan states "I am disputing these mortgages" under the listing of the First Bank Mortgage claims in Class 1. However, simply not providing for the payments of claims is not proper in Bankruptcy Court. No provision is made providing a "bond" for these disputed amounts if the Debtor uses the automatic stay in lieu of obtaining an injunction in non-bankruptcy court litigation over his alleged dispute (whether there is an arrearage) with First Bank Mortgage.

This court has permitted debtors to use the automatic stay in lieu of obtaining an injunction (and possibly having to post a bond) as part of a plan to litigate an underlying dispute with a creditor. The court generally requires that the necessary undisputed current payment and arrearage amount be paid. The disputed portion is held by the Chapter 13 Trustee (or placed in a blocked account) each month which the court can then use for Federal Rule of Civil Procedure 60(c) damages if the creditor was improperly enjoined from exercising its rights. The monies can also then be used to fund the plan to make the payments ultimately determined owing to that creditor, or if not owed to a creditor holding a secured claim, then the monies are part of the debtor's projected disposable income to fund the Chapter 13 plan. *In re De la Salle*, Bankr. E.D. Cal. 10-29678, Civil Minutes for Motion to Dismiss or Convert (DCN: MBB-1), Dckt. 230 (Bankr. E.D. Cal. 2011), *affirm.*, *De la Salle v. U.S. Bank, N.A. (In re De la Salle)*, 461 B.R. 593 (B.A.P. 9th Cir. 2011).

Debtor also fails to list any attorneys fees in the plan. The court notes that Debtor retained Counsel, William F. Abbott on April 15, 2014.

The proposed plan does not appear to be an actual "plan," but rather a form that has been filling in that does not make logical sense. It does not appear that Debtor made a good faith effort to propose a feasible plan.

A review of the Debtor's Schedules also shows some major discrepancies. For instance, in Debtor's Schedule J, Debtor fails to list any amounts for telephone, home maintenance, clothing, laundry and dry

cleaning, medical and dental expenses, recreation/entertainment, any homeowner's insurance, or any taxes. Schedule J, Dckt. 11. These do not appear realistic for a household of three (Debtor and two small minors). Rather than an accurate statement of expenses, this appears to be a fabrication to support minimal payments under a plan.

As the Motion to Confirm and supporting pleadings are fatally deficient, the proposed Chapter 13 plan is not confirmable, and the court grants the motion and dismisses the case.

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

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

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

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

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

15.	11-30429 -E-13	LEONARDO GARCIA-VELASQUEZ	CONTINUED MOTION TO DISMISS
	DPC-9	Pro Se	CASE
			4-29-14 [83]

CONT. FROM 5-28-14

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 29, 2014. By the court's calculation,

29 days' notice was provided. 28 days' notice is required.

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

The court's decision is to xxxx the Motion to Dismiss.

JULY 9, 2014 HEARING

No supplemental pleadings have been filed to date. At the hearing,
XXXXXXXXXXXX

PRIOR HEARING

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,200.00 delinquent in plan payments, which represents multiple months of the \$2,135.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor filed a response, stating that he believes he is only behind with three (3) payments instead of four payments. Debtor states he will be making these three payments by May 24, 2014, which will bring him current. Debtor states he is behind the three payments due to unexpected costs with repairs to his home; such as, installing a new electrical box, repairing plumbing (main sewage line) and repairs to the kitchen. Debtor states that these unexpected costs were not budgeted, but had to be repaired for the safety of his home.

However, Debtor not providing evidence that he is in fact current with his plan payments, the court grants the motion.

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

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

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

IT IS ORDERED that the Motion is xxxx.

16. [12-41229-E-13](#) MICHAEL/AISHA ROMERO
DPC-1 Peter G. Macaluso

MOTION TO DISMISS CASE
6-9-14 [[34](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Chapter 13 Trustee moves to dismiss the case as the debtor is in material default pursuant to section 5.03 of the plan, which provides that if the plan will not complete within six months of its stated term, not to exceed 60 months, Trustee may request appropriate relief. According to the Trustee's calculations, the plan will complete in 53 months as opposed to the 36 months proposed.

DEBTOR'S RESPONSE

Counsel for Debtors responds, stating that the Debtors are current under the plan. Counsel states that Debtors had a yard sale and will have another one to accumulate funds to make up the percentage to unsecured creditors. Counsel for Debtors states that Debtors will be paying a lump sum payment to the Trustee which should allow for up to \$1,500 for personal property which is allowed under the local rules.

However, no evidence of the factual allegations stated in the responds are supported by admissible evidence for the court to consider. The Debtors merely have they court make unsupported arguments in the Opposition.

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

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

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

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

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

17.	<u>11-40434</u> -E-13	HARDEV/HARJINDER	MOTION TO DISMISS CASE
	DPC-1	BUDHEASHA	6-6-14 [28]
		Peter G. Macaluso	

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

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

18. [14-22134](#)-E-13 CHERYLE MCNEAL
DPC-1 W. Steven Shumway

MOTION TO DISMISS CASE
6-11-14 [[30](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$349.16 delinquent in plan payments, which represents multiple months of the \$174.58 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor responds, stating that the payment will be made by July 1, 2014 and that she is working with her attorney to have a proposed modified plan on file before the hearing on the motion.

A review of the docket shows an amended plan was filed on June 26, 2014, set for hearing on August 19, 2014.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 37, 40. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity).

While the Declaration appears to provide some testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid.

601, 602), there does not appear to be testimony as to all of the elements for confirmation under 11 U.S.C. §§ 1329, 1325, and 1322. It appears questionable if the court could confirm the Modified Chapter 13 Plan based on the evidence presented.

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.

Therefore, 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.

19. [14-22734-E-13](#) GERALD/VIRGINIA MARTINEZ MOTION TO DISMISS CASE
DPC-2 Michael O'Dowd Hays 6-3-14 [[35](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$419.30 delinquent in plan payments, which represents multiple months of the \$220.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S RESPONSE

Debtor states that the delinquency arose from a turnover of that amount in garnished wages by the Sacramento County Sheriff, which was never turned over to the Trustee because it was returned to Debtor's employer. Debtor states he made the subsequent payment but that the amount from his employer has never been returned.

Debtor remaining delinquent on plan payments, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

20.	09-37136 -E-13	ROBERT/CAROL HORRILLO	MOTION TO DISMISS CASE
	DPC-1	James L. Brunello	6-11-14 [43]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

21. [14-21637](#)-E-13 KATHERINE ALLEN
DPC-1 C. Anthony Hughes

MOTION TO DISMISS CASE
6-11-14 [[38](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 6, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

22. [10-30741](#)-E-13 RICHARD HALK
DPC-6 Scott A. CoBen

MOTION TO DISMISS CASE
6-11-14 [[105](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,067.00 delinquent in plan payments, which represents one month of the \$5,067.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtor alleges he will have paid the outstanding delinquency by the July 9, 2014 hearing date to become current under their plan. However, this statement is not supported by any evidence or exhibit of payments submitted prior to the hearing date. Therefore, Debtor is still considered delinquent.

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

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

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

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

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

23. [14-21541](#)-E-13 **STEPHANIE LEFORT**
George T. Burke
5-27-14 [[25](#)]

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**

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

The Order to Show Cause was served by the Clerk of the Court on Stephanie Marie LeFort, "Debtor," Trustee, and other parties in interest on May 27, 2014. The court computes that 43 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on April 21, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

24. [14-21541](#)-E-13 STEPHANIE LEFORT
George T. Burke

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-27-14 [[26](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Stephanie Marie LeFort, "Debtor," Trustee, and other parties in interest on May 27, 2014. The court computes that 43 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 20, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

25. [14-21541](#)-E-13 STEPHANIE LEFORT
DPC-1 George T. Burke

MOTION TO DISMISS CASE
6-10-14 [[29](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,700.00 delinquent in plan payments, which represents multiple months of the \$850.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 22, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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. [14-24041](#)-E-7 CHARLES/JOVEN RUSSELL
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-14-14 [[26](#)]

CASE CONVERTED TO CH. 7 ON
5/16/14

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

The Order to Show Cause was served by the Clerk of the Court on Creditor Emmanuel Pascus, Charles and Joven Russell, "Debtor," Trustee, and other parties in interest on May 14, 2014. The court computes that 57 day's notice has been provided.

The court issued an Order to Show Cause based on Creditor's failure to pay the required fees for a Motion for Relief, which was filed on April 30, 2014 (\$176 due on April 30, 2014).

The court's tentative decision is to sustain the Order to Show Cause, order Counsel for Creditor to pay a corrective sanction of \$1,001.00 and the \$176.00 filing fee on or before July 30, 2014.

The court's docket reflects that the default has not been cured. The following filing fees for the Motion for Relief are delinquent and unpaid by Creditor Emmanuel Pascua: \$176.

Creditor's counsel filed the motion for relief from the automatic stay on April 30, 2014. Dckt. 9. On May 5, 2014, the Clerk of the Court sent counsel a courtesy Notice of Payment Due (Dckt. 21). Notwithstanding this Notice, counsel failed to pay the filing fee. This necessitated the Clerk of the Court issuing an Order to Show Cause why Counsel should not be sanctioned for failing to pay the required filing fee.

The Clerk of the Court made an error, setting this Order to Show Cause for the Chapter 13 Dismissal Calendar rather than for the hearing on the Motion for Relief. The court was not aware of this failure to pay the filing fee when it granted the Motion for Relief From the Automatic Stay on June 5, 2014. Dckt. 51. If the court was aware of Counsel's default and failure to pay the filing fee, the Motion for Relief would have been denied.

The Order to Show Cause ordered Michele Louise Giguere, counsel for Creditor, to appear in person at the July 9, 2014 hearing. At the hearing, xxxxxxxxxxxxxxxxxxxx.

In light of the Clerk of the Court providing the courtesy notice and affording counsel a second opportunity to pay the filing fee (the first was when the motion was filed by counsel on-line), the failure to pay the fee is part of a scheme to avoid paying fees. This conduct cannot, and will not, be allowed or excused by the court.

The court ordered that Michele Giguere to pay sanctions in the amount of \$1,001.00 and the \$176.00 filing fee on or before July 30, 2014, to the Clerk of the Court.

If the Sanctions and Fees are not paid on or before July 30, 2014, the court shall issue a further Order to Show Cause as to why Michele Giguere's electronic filing privileges in the Eastern District of California should not be suspended immediately for a period of six months and why she should not be referred to the United States District Court for further sanctions, including, but not limited to, a punitive sanction of not less than \$2,500.00 and suspension of admission to practice in the Eastern District of California for a period not less than one year.

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 and ordered that Michele Giguere shall pay sanctions in the amount of \$1,001.00 and the \$176.00 filing fee on or before July 30, 2014, to the Clerk of the Court.

IT IS FURTHER ORDERED that if the Sanctions and Fee are not paid on or before July 30, 2014, the court shall issue a further Order to Show Cause as to why Michele Giguere's electronic filing privileges in the Eastern District of California should not be suspended immediately for a period of six months and why she should not be referred to the United States District Court for further sanctions, including, but not limited to, a punitive sanction of not less than \$2,500.00 and suspension of admission to practice in the Eastern District of California for a period not less than one year.

27. [14-24045](#)-E-13 DAVID OLIVERA
DPC-2 Pro Se

MOTION TO DISMISS CASE
6-11-14 [[22](#)]

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

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

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$25.00 delinquent in plan payments, which represents one month of the \$25.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

The court also notes that this is not the Debtor's first bankruptcy case. In 2010, with the assistance of counsel the Debtor commenced and obtained his discharged in a Chapter 7 case. 10-39231. On March 17, 2014, Debtor commenced a Chapter 13 case in pro se. 14-22661. That case was dismissed on April 4, 2014. That Chapter 13 case was dismissed due to the failure of the Debtor to file the basic pleadings necessary to prosecute a bankruptcy case (Chapter 13 Plan, Schedules A-J, and Statement of Financial Affairs).

In the present case the Debtor explains that he is unemployed and currently has \$400.00 a month in gross income. Dckt. 11 at 17. The Chapter 13 Plan filed (for which there is no motion to confirm filed) provides for Debtor to make \$25.00 a month plan payments. Dckt. 10. No claims are provided for to be paid through the Chapter 13 Plan.

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

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

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

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

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

28. [12-20846](#)-E-13 SALVADOR/AUDRA ACOSTA
DPC-1 Peter G. Macaluso

MOTION TO DISMISS CASE
5-30-14 [[102](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,189.00 delinquent in plan payments, which represents multiple months of the \$341.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtors have filed and served on June 12, 2014 a Motion to Modify Plan that will be heard on July 22, 2014 (Dckt. No. 106), and allege to be current under that proposed plan.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 196, 108. The Motion appears to "mostly" comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to most of the facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602).

The court notes that one missing grounds and evidence relating thereto a liquidation analysis showing that creditors are receiving as much through the Chapter 13 as they would have through a Chapter 7. Counsel may want to file supplemental evidence to try and confirm the Plan at the

confirmation date, rather than having the court deny the motion to confirm and then have to start over.

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.

Based on the foregoing, 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.

29. [08-36047](#)-E-13 JOHN/CHARLENE JOHNSON MOTION TO DISMISS CASE
DPC-3 Peter G. Macaluso 6-11-14 [[131](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$32,322.00 delinquent in plan payments, which represents multiple months of the plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtors responds, requesting more time to make the outstanding payment of \$6,312.00 to become current under their Plan.

However, as stated in Trustee's motion Debtors are currently in the 67th month of their Plan, and actually \$32,322.00 delinquent. The Motion to Modify the Plan was denied and the Plan not confirmed at the June 10, 2014 hearing (Dckt. No. 135). Debtors do not supply any evidence or exhibit of payment with their opposition, thus they are still considered delinquent.

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. [14-23248](#)-E-13 **JAMES BURKHALTER** **MOTION TO DISMISS CASE**
DPC-1 **Mikalah R. Liviakis** 6-25-14 [[39](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 25, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$230.00 delinquent in plan payments, which represents multiple months of the \$115.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

31.	14-23348-E-13	OMAR PINGOL	MOTION TO DISMISS CASE
	DPC-1	Karl-Fredric J. Seligman	6-3-14 [62]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent

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

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

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

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

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

32. [14-20250-E-13](#) JAYMESON MITCHELL AND MOTION TO DISMISS CASE
DPC-1 ELIZABETH 6-3-14 [[36](#)]
Steele Lanphier

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 1, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

33. [10-42552](#)-E-13 MICHAEL HARUFF MOTION TO DISMISS CASE
DPC-2 Kristy A. Hernandez 5-29-14 [[102](#)]

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

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

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 Trustee seeks dismissal of the case on the basis that the Debtor is \$11,295.00 delinquent in plan payments, which represents multiple months of the \$2,825.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor states that he intends to become current under the Plan payments by making a payment in the amount of \$14,120.00 prior to the hearing. However, Debtor does not support the Opposition with any evidence or proof of payment. Therefore, Debtor is still considered delinquent under the 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 granted and the case is dismissed.

34. [14-24254-E-13](#) **REBECCA SCHLOSSAREK**
James Andrews

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-19-14 [[32](#)]**

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

The Order to Show Cause was served by the Clerk of the Court on Rebecca Schlossarek, "Debtor," Trustee, and other parties in interest on May 19, 2014. The court computes that 51 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$30.00 due on May 5, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$30.00.

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

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

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

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

35. [14-24254-E-13](#) REBECCA SCHLOSSAREK
DPC-2 James Andrews

MOTION TO DISMISS CASE
6-11-14 [[40](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

The Motion to Dismiss is granted and the case is dismissed

The Trustee seeks dismissal of the case on the basis that the Debtor is \$750 delinquent in plan payments, which represents one month of the \$750 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Additionally, the Trustee points out that the Debtor does not meet the requirements of 11 U.S.C. § 109(e) to qualify as a Chapter 13 debtor, by owing secured debt in excess of \$1,149,525. According to Debtor's Schedule D the secured debt amounts to \$1,184,000.

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

case is dismissed.

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

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

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

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

36. 10-20455-E-13 TODD/JUDY LINDENMUTH MOTION TO DISMISS CASE
DPC-8 Mark A. Wolff 6-11-14 [[181](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,768.95 delinquent in plan payments, which represents multiple months of the \$3,110.00 plan payment. Failure to make plan payments is

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

Debtor's Opposition

Debtors allege they will have paid the outstanding \$11,878.95 by the July 9, 2014 hearing date to become current under their plan. However, this statement is not supported by any evidence or exhibit of payments submitted prior to the hearing date. Therefore, Debtors are still considered delinquent.

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

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

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

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

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

37.	10-25457 -E-13	STEPHEN/MITZIE BUNCH	MOTION TO DISMISS CASE
	DPC-3	Kristy A. Hernandez	6-6-14 [32]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee

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

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

38.	<u>13-27857-E-13</u>	ERROL/ALITA MERCADO	MOTION TO DISMISS CASE
	DPC-2	Scott J. Sagaria	6-11-14 [<u>38</u>]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,850 delinquent in plan payments, which represents multiple months of the \$700 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

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

39.	<u>14-21158</u> -E-13 ANDRE WILLIAMS Scott M. Johnson	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-12-14 [72]
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Final Ruling: No appearance at the July 9, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Andre L. Williams, "Debtor," Trustee, and other parties in interest on June 12, 2014. The court computes that 27 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on June 9, 2014).

The court's decision is to discharge the Order to Show Cause.

The court's docket reflects that the default has been cured.

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

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

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

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

40.	<u>14-21158</u> -E-13 ANDRE WILLIAMS Scott M. Johnson	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 5-13-14 [64]
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Final Ruling: No appearance at the July 9, 2014 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Andre L. Williams, "Debtor," Trustee, and other parties in interest on May 13, 2014. The court computes that 57 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 14, 2014).

The court's decision is to discharge the Order to Show Cause.

The court's docket reflects that the default has been cured.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, and Office of the United States Trustee on April 25, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The May 28, 2014 hearing was continued to give Debtor's newly appointed counsel of record time to resolve the issues raised in the motion to dismiss and obtain necessary documents. Trustee alleges that not all issues have been resolved.

The Trustee seeks dismissal of the case on the basis that the Debtor remains \$3,604 delinquent in plan payments, which represents one month of the \$3,604 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Further, the Trustee alleges that the Debtor appeared at the Meeting of Creditors held pursuant to 11 U.S.C. § 341, but Debtor's attorney of record (counsel who recently substituted into the case) was absent. Therefore, the Meeting was continued to August 7, 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).

Additionally, the Trustee states that Debtor has still not provided the requested Business Questionnaire or verification of Debtor's Social

Security Number and has failed to resolve the objections to the plan 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.

42.	<u>14-21662</u> -E-13	ANN-MARIE SCOTT	MOTION TO DISMISS CASE
	DPC-1	Richard L. Sturdevant	6-3-14 [<u>44</u>]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

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

43. [14-20565](#)-E-13 RYAN/BRENDA COBOS MOTION TO DISMISS
DPC-1 Aaron C. Koenig 6-11-14 [[41](#)]
CASE DISMISSED AS TO RYAN
COBOS ONLY ON 3/17/14

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,303.08 delinquent in plan payments, which represents multiple months of the \$650.77 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

The Opposition states that Debtor is current with all payments as of June 25, 2014. A subsequent payment came due on June 25, 2014, and counsel is not aware if the payment is made. Furthermore, this statement is not supported by any evidence or exhibit of payments submitted prior to the hearing date.

Confirmation of Plan

On June 24, 2014, the court granted Debtor's motion to confirm First Amended Plan. The Trustee confirmed at the June 24, 2014 hearing that the Debtor was current on the plan payment.

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.

44. [14-21465](#)-E-13 THOMAS/DEBORAH LUPTON MOTION TO DISMISS CASE
DPC-1 Peter G. Macaluso 6-10-14 [[24](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

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

45. [14-25265](#)-E-13 SHERYL WOLHART
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-23-14 [[20](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Sheryl L. Wolhart, "Debtor," Trustee, and other parties in interest on June 23, 2014. The court computes that 16 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 18, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

46. [14-24266](#)-E-13 MAYLENE RAMAGOZA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-30-14 [[30](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Maylene F. Ramagoza, "Debtor," Trustee, and other parties in interest on May 30, 2014. The court computes that 40 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on May 27, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), 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.

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 Motion to Dismiss is granted and the case is dismissed.

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

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

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

is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Additionally, the Trustee filed this Motion to Dismiss based on the Debtor's failure to file:

- Certificate of Credit Counseling

Prior Bankruptcy Case

After the Trustee filed the present motion, the Debtor filed her own motion to dismiss. Dckt. 40. In her motion Debtors offers no more than stating she "requests that her Chapter 13 be dismissed."

The Debtor's prior bankruptcy case (No. 13-26161) was file don May 3, 2013. It was dismissed on August 8, 2014. The case was dismissed due to Debtor's failure to attend the First Meeting of Creditors, failure to provide tax returns, and failure to provide payroll advices. 13-26161, Civil Minutes Dckt. 46.

The Chapter 13 Plan filed by the Debtor in the prior case provided for \$100.00 a month payments for the first 12 months, and then increased by \$100.00 annually, so that in year six (notwithstanding the five year maximum plan term), the Debtor would be making \$600.00 a month payments. 13-26161 Dckt. 14. However, the Plan requires \$1,400.00 in Class 1 payments and the dividend of 1% on \$100,000.00 in unsecured claims monthly.

On her Schedules in the prior bankruptcy case Debtor listed no creditors on Schedules D, E, and F. 13-26161, Dckt. 13. On Schedule I Debtor lists having monthly income of \$2,400.00 (which includes \$700.00 in real property income). On Schedule J Debtor lists \$2,300.00 a month in expenses. Debtor makes no provision for home maintenance expenses, no medical or dental expenses, \$150.00 for transportation expenses, no health insurance expense, and no expenses relating to generating \$700.00 a month in real property income.

Debtor has now repeated that conduct in this case, failing to appear at the first meeting of creditors, failing to provide payroll advices, failure to attend First Meeting of Creditors, failure to provide tax returns, and failure to provide a credit counseling certificate. The Chapter 13 Plan in this case (Dckt. 13) provides for \$100.00 a month payments for thirty-six months. One secured claim with monthly payments of \$917.00 is listed in Class 1. The balance of the Plan is left blank with respect to treatment of any other claims.

The court set the Debtor's motion to dismiss for hearing to afford the Chapter 13 Trustee and U.S. Trustee an opportunity to address the repeat filings, failure to fulfill the minimal obligations of a debtor, and the dismissal of the case. Further, whether dismissal of this case is likely to be filed by further repeat filings by Debtor. FN.1.

FN.1. The repeat, non-productive filing of bankruptcy cases for consumers not only causes creditors, U.S. Trustee, Chapter 13 Trustee, and court waste resources, but more significantly results in Debtors losing important rights - such as termination or lack of automatic stay pursuant to 11 U.S.C. §§ 362(c)(3) and (4), and the 180 day bar on refiling under 11 U.S.C. § 109(g).

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.

48.	<u>14-24266-E-13</u> MAYLENE RAMAGOZA Pro Se	MOTION TO DISMISS CASE 6-20-14 [<u>40</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Notice Provided: The Order Setting Hearing on Motion to Dismiss was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on June 26, 2014. 14 days notice of the hearing was provided.

On May 3, 2013, Debtor Maylene Ramagoza ("Debtor") filed a Chapter 13 Bankruptcy Petition, Case No. 13-26161. Debtor appeared in pro per and the case was dismissed on August 2, 2013 when the court granted the Trustee's Motion to Dismiss for the following reasons:

The Trustee seeks dismissal of the case on the basis that the Debtor has failed to appear at the First Meeting of Creditors that was held on June 20, 2013. The debtor has also failed to provide Tax Returns Case Number: 2013-26161 Filed: 7/31/2013 Doc # 46 and Employer Payment Advices received 60 days prior to filing. In addition the debtor also failed to file Credit Counseling Certificate, making Debtor ineligible to be a debtor under 11 U.S.C. § 109(h). Finally, the debtor is delinquent at least \$100 in plan payments.

Civil Minutes, Case No. 13-26161, Dckt. 46.

Debtor commenced this case on April 25, 2014, in pro per. Trustee has filed a Motion to Dismiss for several of the same reasons as in the

prior case:

- A. Debtor did not commence making plan payments and is \$100.00 delinquent in plan payments, which represents multiple months of the \$100.00 plan payment.
- B. The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). Also, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required.
- C. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341.

At the July 1, 2014 hearing on a motion for relief from the stay the court terminated the stay in this case to allow Federal Home Mortgage Corporation seek to obtain possession of real property which Debtor asserts she own son Schedule A.

The court has granted the Chapter 13 Trustee's motion to dismiss. The court denies the Debtor's motion 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 filed by Debtor having been presented to the court, the court having granted the Chapter 13 Trustee's motion to dismiss, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

49. [10-22769](#)-E-13 GLENN LEW AND ROSA RIVERA MOTION TO DISMISS CASE
DPC-1 Scott A. CoBen 6-11-14 [[138](#)]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,600.00 delinquent in plan payments, which represents multiple months of the \$1,300.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtors allege they will have a new plan on file by the July 9, 2014 hearing date to address the Trustee's concerns. However, this statement is not supported by any evidence submitted to date. Furthermore, no modified plan appears on the docket to date. Therefore, Debtors are still considered delinquent.

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

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

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

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

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

50. 13-30969-E-13 GENE TOWNSEND
DMB-1 Eamonn Foster

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR FINDING THAT RELIEF
FROM STAY IS NOT REQUIRED
4-9-14 [[55](#)]

JAMES ABEL VS.

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 9, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay 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 non-responding parties 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 for Relief From the Automatic Stay is granted.

James and Kathryn Abel, Trustees of the Abel Trust ("Movants") seek relief from the automatic stay with respect to the real property commonly known as 23456 Richfield Road, Corning, California (the "Property"). Movant has provided the Declaration of James Abel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The James Abel Declaration states that there no post-petition payment made since the filing of the case. Movants state that Debtor proposed a Chapter 13 plan stating that Debtor would sell the subject property within 18 months but no provision was made for ongoing payments to the Creditor or for payments of the arrears. The Trustee objected to the plan and it was not confirmed. Creditor now wishes to proceed with foreclosure.

Non-Opposition has been filed by Trustee.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$248,256.77 (including \$248,256.77 secured by Movant's first deed of trust), as stated in the James Abel Declaration and Schedule D filed by James and Kathryn Abel ("Debtor").

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is granted.

No other or additional relief is granted by the court.

The court shall issue an 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 Relief From the Automatic Stay filed by James and Kathryn Abel 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 automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow James and Kathryn Abel, their agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to

secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 23456 Richfield Road, Corning, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.

51. 13-30969-E-13 GENE TOWNSEND
NLE-2 Eamonn Foster

CONTINUED MOTION TO DISMISS
CASE
3-28-14 [[48](#)]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The Trustee originally argued that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. The case was filed on August 20, 2013, and Debtor has yet to confirm a Plan. The Trustee's Objection to Confirmation, NLE-1, was heard and sustained on January 28, 2014. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

* * * *

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 13, 2014).

The court's docket reflects that the default has been cured.

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

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

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

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

53.	<u>12-41273-E-13</u>	AMELIA VALITE Robert Hale McConnell	MOTION TO DISMISS CASE 6-9-14 [<u>56</u>]
	DPC-1		

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Plan payments will complete in 102 months as opposed to the 60 months proposed by the current Plan, which exceeds the maximum amount of time allowed for a Plan under 11 U.S.C. § 1322(d). The current Plan accounts for total payments of \$17,700.00, but the amount to be paid is \$28,651.69 plus Trustee fees.

Debtor was provided with a Notice of Filed Claims on July 12, 2013

(Dckt. No. 52), which includes claims not accounted for in the Chapter 13 Plan. Page 2, Item (5) of the Notice indicates that a Motion to Modify the Plan is required if the Notice includes claims which will prevent the Plan from being completed timely under 11 U.S.C. § 1322(d).

A review of the docket shows that following receipt of the July 12, 2013 Notice of Filed Claims, Debtor has to date neither filed a Motion to Modify the Plan, nor an objection to claims.

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

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

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

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

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

54.	12-41175-E-13	MALAI KHAMVONGSA	MOTION TO DISMISS CASE
	DPC-2	Michael M. Noble	6-9-14 [39]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure

9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

55. [11-44679-E-13](#) JAMES GEORGIS MOTION TO DISMISS CASE
DPC-5 Peter G. Macaluso 6-11-14 [[29](#)]

Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$380.00 delinquent in plan payments, which represents multiple months of the \$190.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtors allege they will have a new plan on file on or before the July 9, 2014 hearing date. However, this statement is not supported by any evidence submitted to date. Therefore, Debtors are still considered delinquent.

The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtors. Dckt. 35, 37. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity) and the Declaration appears to generally provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R. Evid. 601, 602). Counsel may want to review the pleadings to make sure that all of the confirmation elements are supported with competent, admissible evidence (including the liquidation analysis).

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.

56.	14-22679 -E-13 DENNIS FLORES DPC-1 Mark Lapham	CONTINUED MOTION TO DISMISS CASE 5-12-14 [47]
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Final Ruling: No appearance at the July, 9, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 12, 2014. By the court's calculation, 16 days' notice was provided. 14 days' notice is required..

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion to Dismiss is denied as moot.

The Trustee seeks the dismissal of this case. However, on July 1, 2014, the Debtor filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. *Fed. R. Bankr. P. 1017(f)(3); In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on July 1, 2014. *McFadden*, 37 B.R. at 521.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, the case having been converted to one under Chapter 7, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is denied as moot.

57. 14-23084-E-13 ROBERT LEWIS MOTION TO DISMISS CASE
DPC-2 Michele M. Poteracke 6-10-14 [[32](#)]

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

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

Below is the court's tentative ruling.

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

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$110,942.92 delinquent in plan payments, which represents multiple months of the plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

LATE FILED RESPONSE

Counsel for Debtor filed a late response on July 2, 2014, (7) seven days before the hearing on the Motion to Dismiss. Counsel for Debtor states that the request to dismiss the case came after Debtor fell into multiple problems with sustaining the chapter 13 case, and amidst settlement negotiations with Debtor's primary creditor, Laurie Burton. Counsel states that the bankruptcy was filed to permit Debtor some breathing room to get back onto his feet and to have an orderly liquidation of his assets, if he failed to do so, for the benefit of his creditors, but primarily, Ms. Burton. The retainer agreement between Debtor and counsel specifically acknowledged the need to actively participate with the settlement discussions and state court settlement conferences with Ms. Burton in order to find a way to satisfy her claim. Counsel states that when it became obvious in mid-May 2014, that Debtor's life was in major upheaval and he would not be able to comply with his obligations in the bankruptcy case, the request was made to dismiss the case.

Counsel states that between May 8 and May 15, 2014, Debtor experienced a basic breakdown in every sense of the word, in his relationships, his judgment, his obligations, emotionally and mentally. And on May 15, 2014, it became clear that he could not proceed with the bankruptcy case. Prior to May 15, 2014, a request had been made to the trustee to continue the original creditors meeting due to a court conflict that Debtor had in criminal court. By the time the continued creditors meeting was scheduled, Debtor had already filed a request to dismiss the case, and therefore, did not attend the re-scheduled creditors meeting. He had supplied the trustee, in advance, with those documents required in advance of the originally set meeting.

Counsel requests that his request to dismiss the Chapter 13 case be approved so that the settlement with Ms. Burton can be consummated and that the transfer of funds and the residence to Ms. Burton prior to the order of dismissal not be avoided or considered an attempt by Ms. Burton to violate the stay.

No declaration is provided by Debtor. Rather, it is only Debtor's counsel who provides testimony under penalty of perjury. In it she recounts the trials and tribulations of the Debtor, prior to and after the commencement of this bankruptcy case. The testimony raises serious issues concerning the Debtor's legal competency.

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.

58. [14-23084](#)-E-13 ROBERT LEWIS MOTION TO DISMISS CASE
MMP-1 Michele M. Poteracke 5-21-14 [[25](#)]

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

Notice Provided: The Order Setting Hearing on Motion to Dismiss was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on June 19, 2014. 21 days notice of the hearing was provided.

The court's decision is to deny the motion without prejudice, the court having granted the Chapter 13 Trustee's motion to dismiss this bankruptcy case.

On March 26, 2014, Robert Craig Lewis ("Debtor") commenced this Chapter 13 bankruptcy case. On April 9, 2014 he filed his Schedules and Statement Of Financial Affairs. Dckt. 9. ON Schedule E he listed two creditors holding unsecured claims totaling \$346,077.96, of which \$320,000.00 was stated to be entitled to priority. No secured claims are listed on Schedule D and the general unsecured claims total \$7,341 .36. The proposed Chapter 13 Plan provides for an \$80.00 a month payment for a 34 months, an \$82,000.00 payment in one month, and an \$110,862.92 payment in one month. The Plan states that it will be funded from a refinance of the Debtor's real property. Plan, Dckt. 11.

The Trustee filed an objection to confirmation, asserting that the Debtor (1) failed to appear at the First Meeting of Creditors, (2) has not made Plan payments, and (3) the attorneys' fees provided in the plan exceed the amount allowed in a non-business case without order of the court. Dckt. 21.

On May 21, 2014, Laurie Burton, the creditor identified with a \$320,000.00 priority unsecured claim on Schedule E filed an objection to confirmation of the Chapter 13 Plan. Dckt. 28. She alleges in the objection that the Debtor has failed to disclose all of his assets on the Schedules (including a brand new truck). In her declaration, she testifies as to a truck worth \$30,000.00, a \$70,000.00 loan made in May 2014. Dckt. 30.

Before the court will dismiss this case pursuant to the Debtor's request, all parties need to address these contentions. The Chapter 13 Trustee has filed a motion to dismiss the bankruptcy case for the failure to attend the First Meeting of Creditors and the failure to make the \$80.00 a month plan payments. The court does not know if the Chapter 13 Trustee and the U.S. Trustee have investigated the contention of inaccuracies in the Statement of Financial Affairs.

TRUSTEE'S RESPONSE

Trustee states that he has not been able to examine the Debtor, as the Debtor failed to appear at the First Meeting of Creditors held May 15, 2014 and the continued meeting held June 12, 2014. The next continued hearing is set for August 7, 2014.

Trustee states Debtor is delinquent \$111,022.95 in plan payments and he has not received any plan payments to date. Trustee states he is planning on filing a Motion to Disgorge Attorneys fees.

DISCUSSION

Very serious allegations have been made concerning the Debtor's conduct in this case and statement made under penalty of perjury. The court will not grant this motion, which is a thinly disguised "emergency escape" when it appears the Debtor has made material misstatements under penalty of perjury.

The Debtor's motion is denied without prejudice. The court is addressing these issues through 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.

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

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

59. [14-24089](#)-E-13 ZAK VOGLER AND MICHELLE MOTION TO DISMISS CASE
DPC-3 MARTINEZ-VOGLER 6-18-14 [[29](#)]
Gordon G. Bones

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$5,007.06 delinquent in plan payments, which represents one month of the \$5,007.06 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

Moreover, the IRS filed Court claim #1, indicating that the federal income tax returns for the 2011, 2012 and 2013 tax years still have not been filed. Filing of the returns is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

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

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

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

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

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

60.	09-38291 -E-13	RONALD/ANGELA GATES	MOTION TO DISMISS CASE
	DPC-13	Aaron C. Koenig	6-11-14 [100]

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

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

Below is the court's tentative ruling.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,259.84 delinquent in plan payments, which represents multiple months of the \$1,639.96 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Attorney of Record Aaron C. Koenig requests a July 9, 2014 hearing to determine whether Debtors have made the necessary payments and cured their delinquency by the hearing date.

Based on the evidence before the court, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

61.	<u>11-30195</u> -E-13 DPC-1	ANTHONY DOYLE AND ILONA KOTI-DOYLE Scott A. CoBen	MOTION TO DISMISS CASE 6-6-14 [<u>65</u>]
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Final Ruling: No appearance at the July 9, 2014 hearing is required.

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

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

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

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

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

62. <u>11-22596</u> -E-13	DANIEL/MELISSA MCCORMICK	NOTICE OF DEFAULT AND MOTION TO
DPC-2	Seth L. Hanson	DISMISS CASE
		5-15-14 [98]

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

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

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

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

Correct Notice Provided. The BNC Certificate accompanying the Notice of Default and Application to Dismiss states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 17, 2014. By the court's calculation, 53 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$8,869.36 delinquent in plan payments, which represents multiple months of the \$5,059.62 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtors allege they will have paid the outstanding plan payments by the July 9, 2014 hearing date to become current under their plan. However, this statement is not supported by any evidence or exhibit of payments submitted prior to the hearing date. Therefore, Debtors are still considered delinquent.

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.

63.	14-20297-E-13	ANDREW LUMPKINS	MOTION TO DISMISS CASE
	DPC-1	Timothy J. Walsh	6-3-14 [41]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,947.00 delinquent in plan payments, which represents multiple months of the \$1,983.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtor alleges his business is improving and he will have paid the outstanding plan payments by the July 9, 2014 hearing date to become current under his plan. However, this statement is not supported by any evidence or exhibit of payments submitted prior to the hearing date. Therefore, Debtor is still considered delinquent.

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.

64. [14-20297](#)-E-13 ANDREW LUMPKINS
TJW-1 Timothy J. Walsh

CONTINUED MOTION TO CONFIRM
PLAN
5-5-14 [[31](#)]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on May 5, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee objects to confirmation of the plan because Debtor is \$3,947.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,983.00 is due on June 25, 2015. The case was filed on January 13, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid \$3,985.00 into the Plan to date.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

65. 14-22297-E-13 ANTHONY FURR
DPC-1 Pro Se

MOTION TO DISMISS CASE
6-3-14 [[42](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), 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.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$463.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

Furthermore, Debtors have failed to provide proof of their Social Security Numbers to Trustee to establish the Debtor's identity pursuant to Trustee's request, 11 U.S.C. § 521(h)(2).

Debtor's Opposition

Debtor filed an Opposition asserting his good faith effort to obtain proof of Debtor's Social Security Numbers and attached Exhibits of correspondence with the Social Security Administration to illustrate this. However, this only addresses one of Trustee's asserted defects, as such Debtor is still considered delinquent in payments and has not provided employer payment advices.

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.

66. [11-24798](#)-E-13 KEITH HAYES AND SHARON MOTION TO DISMISS CASE
DPC-2 RANDALL-HAYES 6-11-14 [[60](#)]
Jasmin T. Nguyen

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is to XXXX the Motion to Dismiss.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,080.83 delinquent in plan payments, which represents multiple months of the \$1,993.61 plan payment. Trustee states another payment of \$1,993.61 will come due before the next hearing. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtor's declaration states that Debtor has deposited a cashier's check in the amount of \$2,080.83 to cure the delinquency and that Debtor believes this completes the plan payment, making the additional payment of \$1993.61 stated in Trustee's motion unnecessary. No proof of payment or receipt is attached. The court is unable to verify the status of plan payment and whether it is complete without verification of the Trustee.

JULY 9, 2014 HEARING

At the hearing, XXXXXXXXXX

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 xxxx.

67. [09-39599](#)-E-13 GILBERT/CAROLINE MEDRANO MOTION TO DISMISS CASE
DPC-1 Mary Ellen Terranella 6-11-14 [[55](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on July 3, 2014, Dckt. 63, 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. 63, 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.

68. [13-21559](#)-E-13 EARL MILLER
DPC-1 Timothy J. Walsh

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

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

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

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

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

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

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

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

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

Debtor's Opposition

Counsel for Debtor requests a hearing to oppose Trustee's Notice of Default and Application to Dismiss. Counsel states that Debtor has suffered from a stroke and was admitted to the Kaiser Foundation Rehabilitation Center from May 22, 2014 through May 30, 2014. Counsel for Debtor states that the Center provided a letter that Debtor will be unable to return to work for at least three months and needs supervision and assistance with his

daily living activities. Debtor states he is attempting to withdraw funds from his retirement to catch up on the plan payments.

Trustee's Response

Trustee responds stating:

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

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

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

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

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

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.

69. [10-40257](#)-E-13 MATT BRIDGES AND KATHY NOTICE OF DEFAULT AND MOTION TO
 NLE-1 PERRY-BRIDGES DISMISS CASE
 Peter G. Macaluso 4-16-14 [[68](#)]

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

Notice Provided: The Order Setting Hearing on Chapter 13 Trustee's Notice of Intent was served by the Clerk of the Court through the Bankruptcy Noticing Center on all parties on July 2, 2014. 8 days notice of the hearing was provided.

The court's decision is to xxxxxx the Motion to Dismiss.

On April 16, 2014, the Chapter 13 Trustee issued a Notice of Default by the Debtors for failure to make specified payments due under their confirmed Chapter 13 Plan. Dckt. 68. A month prior to the Notice of Default a substitution of attorney was filed (Debtors' original attorney having passed away in early 2014), which substitution the court authorized by order filed on March 17, 2014. Dckt. 67.

On June 5, 2014, a second substitution of attorney was filed, pursuant to which the court substituted in another attorney for the Debtors. Both the first substituted counsel and the second substituted counsel are known consumer bankruptcy attorneys who regularly appear in this bankruptcy court (all departments). The lodging of the Trustee's order pursuant to the Notice of Default coincided with the filing and authorizing of the second substitution.

The court delayed issuing the order dismissing, watching this file to determine if the new substitute counsel and Debtors would move to cure the default or modify the plan. No action has been taken to date. The court affords the latest counsel the opportunity to address for the court and Trustee whether prompt action will be taken in this case or that the Debtors have resigned themselves to having the case dismissed and the prior four years of performance under a Chapter 13 Plan (this case having been filed on July 30, 2010).

At the hearing, xxxxxxxxxxxxxxxxxxxx.

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

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

The Notice of Default and Motion to Dismiss 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 -----.