

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

July 26, 2017, at 10:00 a.m.

1.	<u>16-24701</u> -E-13 DPC-3	KHAMMAY/KHAMMAI PHOMMAVONGSA Timothy Walsh	MOTION TO DISMISS CASE 6-9-17 <u>[69]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient 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, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee's Motion argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 18, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 11, 2017. Dckt. 78. Debtor's Opposition states: "Debtors oppose the trustee's Motion to Dismiss[.] Debtors request a hearing. Debtors pray the motion be denied." Additionally, the Opposition is dated July 11, 2016. Debtor offers no explanation for the delay in setting a plan for confirmation.

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TRUSTEE'S REPLY

The Trustee filed a Reply on July 18, 2017. Dckt. 80. The Trustee notes that Debtor's latest plan was proposed eighty-two days after the prior one was denied. The Trustee argues that Debtor's Opposition does not provide any explanation for the delay between the two recent plans.

Also, the Trustee notes that he has opposed confirmation of the newly proposed plan. The Trustee requests that this case be dismissed or that the court continue the hearing on this matter to August 29, 2017, to be heard with the Motion to Confirm the Amended Plan.

RULING

Debtor's prosecution of this case and this Motion is concerning. Debtor's Opposition consists of three short statements essentially telling the court that Debtor does not want the case dismissed but without presenting any grounds in support of that position. The Trustee brought this Motion because there had been such a long delay between filing a new plan. In fact, Debtor did not even proposed the latest amended plan until after the Trustee filed this Motion to Dismiss.

The court could view Debtor's delayed strategy of proposing a plan only after the Trustee moved to dismiss as not prosecuting confirmation of the plan in good faith. 11 U.S.C. § 1325(a)(3).

To put this bankruptcy case—filed on July 19, 2016—in context, this is Debtor's fourth bankruptcy case since 2010. The three prior cases are summarized as follows:

- A. Chapter 7 Case No. 10-52307
 - 1. Filed: December 10, 2010
 - a. Attorney for Debtor: Timothy Walsh
 - 2. Chapter 7 Discharge Entered: March 26, 2011.
- B. Chapter 13 Case No. 11-34967
 - 1. Filed: June 15, 2011
 - a. Attorney for Debtor: Timothy Walsh
 - 2. Case Dismissed: September 6, 2011
 - a. Debtor determined to not be prosecuting the case in good faith, failing to provide required financial information to the Chapter 13 Trustee. 11-34967; Civil Minutes, Dckt. 21. Additionally, Debtor was improperly deducting business expenses. *Id.*

C. Chapter 13 Case No. 11-42249

1. Filed: September 14, 2011

a. Attorney for Debtor: Timothy Walsh

2. Case Dismissed: May 10, 2013

a. Debtor's case was dismissed due to material default under the terms of the Plan. 11-42249; Civil Minutes, Dckt. 42. Additionally, Debtor's plan failed to adequately file for the claims filed in that case. *Id.*

Facing the present Motion to Dismiss, Debtor filed a proposed Plan on July 11, 2017. This proposed Second Amended Plan requires a monthly plan payment of \$136.15 for thirty-six months. Creditor Claims are provided for in the proposed Second Amended Plan as follows:

A.	Class 1 Secured.....	NONE
B.	Class 2 Secured.....	NONE
C.	Class 3 Secured.....	NONE
D.	Class 4 Secured.....	NONE
E.	Class 5 Priority Unsecured.....	NONE
F.	Class 6 Special Treatment Unsecured.....	NONE
G.	Class 7 General Unsecured.....	0.00% Dividend

The \$136.15 monthly payments for thirty-six months totals \$4,901.40. After deducting 8% for Chapter 13 Trustee expenses (\$392.11), there is \$4,509.29 for distribution for other administrative expenses and "NONE" or "0.00% Dividend Creditors." Under the proposed Second Amended Plan, Debtor's counsel is to be paid an additional \$2,200.00, consuming 49% of these monies.

In denying confirmation of the prior proposed plan, the court addressed a number of questionable dealings and practices of Debtor. Civil Minutes, Dckt. 66. That portion of the ruling from Minutes for denial of the Original Plan, includes:

"Debtor is not prosecuting this bankruptcy case in good faith, and the court concludes did not file this bankruptcy case in good faith. Debtor has been living non-productively since December 2010 in bankruptcy cases. It appears that the hiatus between the May 2013 dismissal of the prior case and the July 2016 filing of the current case was to allow the Debtor to liquidate assets and divert the proceeds.

Debtor's financial information continues to contain inconsistencies, including paying vehicle insurance when Debtor owns (at least as stated under penalty of perjury on Schedule B) no vehicles. Debtor continues to list a twenty-three-year-old and twenty-seven-year-old child as dependents, giving no reason why these two adults are dependents. Debtor also admits to diverting proceeds

from the liquidation of assets (sale of the business) to pay expenses to assist their adult “college children.” As discussed below, while it is good for a parent to support the higher education of children, it loses its luster when the parent fails to perform a plan in bankruptcy, does not pay creditors, and then diverts proceeds from liquidating assets to transfer monies to their children.”

Civil Minutes, p. 4; Dckt. 34.

Civil Minutes, Dckt. 66. Those Civil Minutes address further multiple misstatements and less-than-good-faith conduct by Debtor. Those include Debtor using, and misusing, the bankruptcy filings to divert assets to their children rather than properly providing for payment of creditor claims.

In denying confirmation of the First Amended Plan, the court discussed this recurring misconduct, stating in part:

“The “Declaration” provided by Debtor appears to suffer from the same deficiency as the prior declarations—lacking on information and truth, and signing merely what the attorney puts in front of the Debtor. Dckt. 45. In reviewing the Declaration, Debtor provides little actual factual, personal knowledge testimony. Rather, Debtor appears to be merely parroting legal conclusions or phrases from the Bankruptcy Code.”

Civil Minutes, Dckt. 66.

In connection with the present motion to confirm the Second Amended Plan, Debtor and Debtor’s Counsel have continued in their practices of not prosecuting this case in good faith. In Debtor’s declaration, no reason is given for why, twelve months into this case, Debtor is still stumbling through trying to confirm a plan. Debtor’s declaration fails to give any actual, personal knowledge testimony of “facts,” but merely parrots conclusions and non-personal knowledge statements prepared by counsel. Debtor “testifies” to:

- A. “Causing” their attorney to move the court to confirm the Second Amended Plan.
- B. Under the Second Amended Plan, payment is increased from \$100.00 to \$139.15 per month, plus tax refunds of unestimated amounts for 2017 and 2018.
- C. Debtor’s conclusion that they are proposing the Second Amended Plan in good faith and that it is Debtor’s best efforts.
- D. Finally, Debtor “prays” that the court confirms the Second Amended Plan.

Declaration, Dckt. 75. Debtor offers no factual testimony, just conclusions dictated to the court.

Debtor has repeatedly demonstrated that they, and their Counsel, are not attempting to prosecute this case in good faith. Debtor has demonstrated that they have used, and misused, the Bankruptcy Laws to divert assets to family members.

Cause exists to dismiss this case. The Motion is granted.

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

Order Granting Motion to Dismiss

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

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

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

2.	<u>12-20006</u> -E-13 DPC-2	KEITH/KELLY RYAN Peter Macaluso	MOTION TO DISMISS CASE 6-27-17 [82]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient 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 27, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

The Motion to Dismiss is granted, and the bankruptcy case is dismissed as to Debtor Keith Ryan. The case is not dismissed as to Co-Debtor Kelly Ryan.

The Trustee argues that Debtor did not file a Motion for Omnibus Relief following the court's denial Debtor's prior two motions for omnibus relief on December 2, 2015, and June 12, 2017. The Trustee states that more than 635 days have passed since the Notice of Death for Keith Ryan was filed, and he notes that the court has not issued an order allowing substitution and continued administration of this case.

If this Motion is denied, then the Trustee intends to submit an order approving the Final Report and Account to the Court that has been filed. *See* Dckt. 62.

The Trustee moves that the Motion be granted as to decedent debtor Keith Ryan (“Deceased Debtor”). Kelly Marie Ryan is the “Surviving Debtor” who has been prosecuting the Chapter 13 Plan since the Deceased Debtor’s passing in February 2014 (twenty-fourth month of the sixty-month confirmed Chapter 13 Plan).

The court refers to the Surviving Debtor and the Deceased Debtor collectively as “Debtor.”

SURVIVING DEBTOR’S OPPOSITION

Surviving Debtor filed an Opposition on July 11, 2017. Dckt. 86. Surviving Debtor promises to file a renewed Motion for Omnibus Relief in this case.

DISCUSSION

A review of the docket shows that Surviving Debtor filed a new Motion for Omnibus Relief on July 13, 2017. Dckt. 88. That motion has been set for hearing on August 15, 2017.

The Trustee has submitted a Final Report in this case, and all that appears to be remaining is for the court to hear Surviving Debtor’s latest Motion for Omnibus Relief.

PRIOR RULINGS OF THE COURT IN THE CURRENT BANKRUPTCY CASE

This bankruptcy case was filed on January 3, 2012. Debtor’s Chapter 13 Plan was confirmed on February 24, 2012. Dckt. 17. The Plan requires Debtor (with the then-income from both Surviving Debtor and Deceased Debtor) to fund it with \$2,500.00 per month. After payment of secured and priority unsecured claims, and the administrative expenses, Debtor could promise only a 0.00% dividend for creditors holding general unsecured claims.

In addressing the prior Motion to have Surviving Debtor appointed as the personal representative for Deceased Debtor and for the court to allow discharges to be entered, the court’s ruling includes the following:

“In substance, Debtor and her counsel seek to rewrite the Bankruptcy Code to be one in which the Code is what the Debtor says it is. The Debtor can have significant financial changes, but accurate information as to the changes is nobody’s business but the Surviving Debtor. Even though almost 50% of the gross monthly income has been lost with the death of the Deceased Debtor, the Surviving Debtor has somehow been able to continue performing the plan which required the now missing income. Schedule I, Dckt. 1. Looking at Schedule J, Surviving Debtor and the Deceased Debtor provided financial information showing that the Deceased Debtors income was necessary to generate the projected disposable income to fund

the Plan with \$1,922.00 a month. Even with the now missing income, the Surviving Debtor and Deceased Debtor could provide for only a 0.00% dividend for creditors holding general unsecured claims, while making the mortgage payment, curing the pre-petition mortgage arrearage to keep their home and pay nondischargeable taxes. Plan, Dckt. 5. How that could occur is nobody's business except that of the Surviving Debtor no explanation to be provided.

The Surviving Debtor has elected to wait until the money has been spent and the however I did it without half our income operation of the plan over the past twenty-one months (since the February 24, 2014 passing of the Deceased Debtor) to bring this to the intention of the court. This effectively frustrates the exercise of judicial power of the court to properly apply the Bankruptcy Code, as written by Congress and not as dictated by the Surviving Debtor, to this case.

It is unfortunate as to how this case has been prosecuted and the Surviving Debtors summary information approach to this Motion. It is very unfortunate that Debtor chose to operate outside of the Bankruptcy Code following the passing of her husband. Few losses can have such significant impact on one and a family. But such does not create the justification for the Surviving Debtor operating outside the Code or failing (or refusing) to provide financial information as to how she has continued to perform the plan and basis for her electing how to disburse the additional assets of the bankruptcy estate (the insurance proceeds)."

Civil Minutes, Dckt. 52.

Performance of the confirmed Chapter 13 Plan was based on Deceased Debtor's gross income of \$3,588.00 and Surviving Debtor's gross income of \$4,618.20. Schedule I, Dckt. 1. Debtor's monthly expenses, exclusive of a mortgage payment, were stated under penalty of perjury to be \$4,100.00 per month and the Plan was confirmed based on that financial information. That allowed Debtor to make the required \$2,500.00 per month payments.

But Surviving Debtor reports that the co-debtor passed away in February 2014, well before the January 2017 end of the Plan term. That caused a loss of 43% of the gross income from which the Plan would be funded.

Surviving Debtor's entire opposition rests on the new motion to substitute Surviving Debtor as the personal representative for Deceased Debtor. Motion, Dckt. 88. It is alleged that notwithstanding losing 43% of the gross income necessary to fund the plan, Surviving Debtor was able to make payments totaling \$90,000.00 (thirty-six payments at \$2,500 each). The "lost" income due to the death of Deceased Debtor totals \$129,168.00 for the final thirty-six months of the Plan.

In her Declaration, Surviving Debtor only provides testimony under penalty of perjury that:

A. She received \$50,000.00 of insurance proceeds upon the death of Deceased Debtor.

- B. The money was spent for Deceased Debtor's funeral (\$15,000) and for Debtor's children's college expenses (\$32,000). Those purported payments exhausted 94% of the life insurance proceeds leaving next to nothing to supplement Surviving Debtor's expenses and provide for the \$90,000.00 in required plan payments after loss of \$129,168.00 of Deceased Debtor's income.
- C. Surviving Debtor's adult children, for whom Surviving Debtor was using the life insurance proceeds, were providing Surviving Debtor with "financial support" (in unstated amounts and timing).
- D. It is also stated that Surviving Debtor's father helped (in unstated amounts) and that one of Surviving Debtor's dependent children also paid Surviving Debtor rent to enable Surviving Debtor to make the Plan payments.
- E. Though Deceased Debtor passed in February 2014, it was not until November 2015 when Surviving Debtor notified her former attorney's office of the death. Surviving Debtor offers no testimony of notifying her attorney of the insurance proceeds or seeking any instruction of her legal responsibilities with respect to the \$50,000.00.
- F. Surviving Debtor notes for the court that Amended Schedules A/B, C, I, and J have been filed in 2017 in connection with the latest Motion for the continued prosecution of this case in the name of Deceased Debtor. As stated below, no such amended Schedules I & J have been filed.

Declaration, Dckt. 90.

What Surviving Debtor fails to provide is any testimony of the actual finances, how she was able to make the Plan payments, and how the Plan was properly performed. Instead, Surviving Debtor merely dictates to the court that such occurred, therefore it is proper.

On Amended Schedule C, filed on May 22, 2017, Surviving Debtor seeks to state an exemption in all \$50,000.00 in proceeds of the theretofore undisclosed life insurance policy. Dckt. 73. On Original Schedule B, Question 20, Surviving Debtor and Deceased Debtor stated under penalty of perjury that they had no interests in any life insurance policies. Dckt. 1 at 24. No exemption is claimed in any life insurance policy on Original Schedule C. *Id.* at 26.

No amended or supplemental Schedules I and J have been filed in this case. Schedules I and J forms have been included as Exhibit 3 (Dckt. 91), but they are not signed by Surviving Debtor under penalty of perjury. Surviving Debtor fails to provide testimony in her Declaration attesting under penalty of perjury to that financial information.

On the Schedule I Exhibit, Surviving Debtor states that her gross income has been \$5,654.13 since this case was commenced in 2012 and that there was no income from deceased co-debtor. The amended box on the Schedule I form is checked, not the supplemental form box, which means that Surviving

Debtor and her counsel are stating that the amount stated on Original Schedule I was incorrect from the start of this case.

On the Schedule I form, Surviving Debtor states that “Debtor 1,” not this surviving debtor, is receiving \$500 per month in “daughter’s rents” and \$200 in “dad’s help.” This yields Surviving Debtor \$4,297.58 per month in net income after taxes and required deductions.

On the Schedule J form filed as an Exhibit, Surviving Debtor “corrects” what is stated in Original Schedule J and lists that Surviving Debtor’s expenses have been only \$2,475.00 since the commencement of this case. That includes a rent mortgage expense of \$1,289.00, resulting in Surviving Debtor purporting to have only \$1,186.00 in all other expenses for Surviving Debtor and her two children since the commencement of this case. This stands in stark contrast to the \$4,100.00 in “reasonable” and “necessary” monthly expenses (which does not include any mortgage payment) that Surviving Debtor and Deceased Debtor stated under penalty of perjury on Original Schedule J.

The Schedule J form filed as an Exhibit lists Surviving Debtor and her two “dependant” daughters (one of whom purportedly pays “rent”) having expenses, excluding mortgage payment, of:

A.	Home Maintenance.....	(\$ 50.00)
B.	Electricity/Gas/Heating.....	(\$ 80.00)
C.	Water/Sewer/Garbage.....	(\$210.00)
D.	Phone.....	(\$ 60.00)
E.	Cell Phone.....	(\$190.00)
F.	Cable & Internet.....	(\$160.00)
G.	Food/Housekeeping Supplies.....	(\$200.00)
H.	Clothing/Laundry.....	(\$ 75.00)
I.	Personal Care Products.....	(\$ 25.00)
J.	Medical Expenses.....	(\$ 12.00)
K.	Transportation.....	(\$100.00)
L.	Entertainment/Recreation.....	(\$ 14.00)
M.	Vehicle Insurance.....	\$ 0.00
N.	Vehicle Registration.....	(\$ 12.00)

Exhibit 3, p. 10–11; Dckt. 91. These expenses total \$1,186.00—for Surviving Debtor and two dependents.

The court has created the chart below, which are the “actual” “reasonable” and “necessary” expenses that the surviving debtor and deceased debtor stated under penalty of perjury on Original Schedule J filed in this case.

Expense For Surviving Debtor, Deceased Debtor, and Two Dependents	Amount Stated on Original Schedule C (Dckt. 1)	Percentage Greater/(Percentage Less) than stated on Schedule J form filed as an Exhibit
Electricity/Gas/Heating	(\$260.00)	225.00%

Water/Sewer/Garbage	(\$280.00)	33.33%
Telephone	(\$60.00)	0.00%
Cell Phone	(\$190.00)	0.00%
Cable & Internet	(\$160.00)	0.00%
Home Maintenance	(\$125.00)	150.00%
Food	(\$875.00)	337.50%
Clothing	(\$160.00)	113.33%
Laundry/Dry Cleaning	(\$40.00)	-46.66%
Personal Care	(\$175.00)	600.00%
Medical/Dental	(\$50.00)	316.66%
Transportation	(\$680.00)	580.00%
Recreation	(\$125.00)	792.92%
Auto Insurance	(\$480.00)	Disappears on Schedule J Form Exhibit
Auto Registration	(\$58.46)	387.16%
Pet Food & Expenses	(\$100.00)	Disappears on Schedule J Form Exhibit
School Expenses	(\$144.00)	Disappears on Schedule J Form Exhibit

Surviving Debtor offers no explanation as to why or how the Original Schedule J amounts should be “amended” and be “corrected” to state the much lower amounts than previously stated under penalty of perjury. This would also mean that Surviving Debtor and Deceased Debtor had substantially more projected disposable income than disclosed (and relied upon by the court) in confirming the Plan in this case.

Surviving Debtor offers no explanation how there can be such dramatic drops in basic expenses, such as food and transportation even assuming that there are now only three adults (Surviving Debtor and two dependent adult daughters) and before it was two adults and two minor dependent daughters. Assuming \$50.00 per month for housekeeping supplies, the Schedule J form Exhibit purports to state that these three adults exist spending \$0.55 per meal during a thirty-day month. FN.1. No explanation is given for how Surviving Debtor, even if she has retained only one of the cars, manages to operate it without paying for auto insurance or can pay for all of the fuel, maintenance, and repairs on \$100 per month.

FN.1. This is computed as follows:

$\$200 \text{ Food/House Keeping Expense} - \$50 \text{ for House Keeping Expenses} = \150.00 For Food

$\$150 \text{ Food Expense} \div 3 \text{ Adults} = \$50.00 \text{ Per Adult Per Month}$

$\$50 \text{ Food Expense} \div 30 \text{ Day} \div 3 \text{ Meal Per Day} = \$0.55 \text{ Per Meal Per Person}$

Looking at the Schedule J form Exhibit, the court concludes that it is merely a “false concoction” intentionally created by Surviving Debtor, with the assistance of counsel, to affirmatively misstate Surviving Debtor’s expenses to mislead the court and parties in interest. It appears that this bad faith conduct has pervaded this case, from the filing of the first documents (with prior counsel) through the latest document filed with the assistance of current counsel.

On Original Schedule I, Surviving Debtor and Deceased Debtor state under penalty of perjury that Surviving Debtor has \$106.00 per month being withheld to repay a “TSA Loan” and \$200.52 per month withheld to repay a “Plan B Loan.” Dckt. 1 at 36. On the Schedule I form Exhibit, \$161.34 is listed as “required repayments of retirement fund loans.” Dckt. 91 at 9. That amount is not consistent with what has been stated under penalty of perjury on Original Schedule I.

On Original Schedule B filed in this case, no retirement accounts, to which repayments could be made, are listed as assets. Dckt. 1 at 23–25. Surviving Debtor and Deceased Debtor go further to state that no such retirement accounts exists, answering “None” to Question 12 on Original Schedule B. *Id.* at 23. To the extent that such asset exists, it remains hidden from the court.

On Amended Schedule A/B, Surviving Debtor once again states under penalty of perjury that she has no interests in any retirement accounts. Amended Schedule A/B Question 21, Dckt. 73 at 7. Also, no life insurance policy, except for the one from which Surviving Debtor received and has diverted \$50,000.00 in proceeds is listed on Amended Schedule A/B.

The present Motion only requests that the court dismiss the case as to the deceased debtor, Keith Gregory Ryan. Cause has been shown for granting that Motion. Surviving Debtor offers no opposition to the Motion but merely states that Surviving Debtor seeks to have the court “sanction” further misstatements and inaccurate statements under penalty of perjury in this case. Surviving Debtor and her counsel have not attempted to diligently appear in this case and prosecute it for Deceased Debtor.

This Motion to Dismiss and the conduct of Surviving Debtor raise serious issues concerning the filing, prosecution, and performance of the Plan in this case. It appears Surviving Debtor, and counsel for Surviving Debtor, have a loose association with *accurate* and *truthful* financial information and actual expenses of Surviving Debtor.

The Chapter 13 Trustee has not requested in this Motion that the case should be dismissed as to Surviving Debtor, but only as to Deceased Debtor. That may be because, notwithstanding the shortcomings discussed by the court above, based on the evidence presented to the court by Surviving Debtor, the Chapter 13 Trustee may well have other information from which he has properly made such a decision.

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

Order Granting Motion to Dismiss

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 Chapter 13 Case is dismissed as to late Keith Gregory Ryan, one of the two debtors in this bankruptcy case. This order does not dismiss the case as to Co-Debtor Kelly Marie Ryan, which case shall proceed in this court.

3. <u>13-31706</u> -E-13 DPC-8	RUDOLPH JUGOZ Matthew DeCaminada	MOTION TO DISMISS CASE 7-6-17 <u>162</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.

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,000.00 delinquent in plan payments (with another \$500.00 coming due before the hearing), which represents multiple months of the \$500.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

4. [14-30007](#)-E-13 **MITCHELL WHITE** **CONTINUED MOTION TO DISMISS**
DPC-2 Michael Hays **CASE**
5-2-17 [[44](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on July 6, 2017, Dckt. 66; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 66, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

5.	<u>13-31616</u> -E-13	ADAM/SHERRI NEWLAND	MOTION TO DISMISS CASE
	DPC-3	Peter Macaluso	7-5-17 <u>[89]</u>

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

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

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

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

Sufficient 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 30, 2017. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

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

The Trustee asserts that on June 21, 2017 the IRS filed Claim #2 indicating that Debtor has not filed returns during the four-year period preceding the filing of the Petition. Filing of the return is required. 11 U.S.C. § 1308. Failure to file a tax return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

The Trustee argues that Debtor did not commence making plan payments and is \$1,390.00 delinquent in plan payments (with another \$1,390.00 coming due before the hearing), which represents one month of the \$1,390.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

Review of Court's Files

A review of the court's files discloses that this is not the first, or even second, recent bankruptcy case filed by Debtor. The two prior recent bankruptcy cases filed by Debtor are:

- A. Chapter 13 Case 16-23603, Debtor Represented by Different Counsel
 - 1. Filed: May 31, 2016
 - 2. Dismissed: September 9, 2016.
 - a. The 2016 case was dismissed due to Debtor being in monetary default and failing to prosecute an amended plan after confirmation of her plan had been denied. 16-23603; Civil Minutes, Dckt. 27.
 - 3. In denying confirmation of the proposed plan in the 2016 case, in addition to Debtor being in monetary default and having failed to provide tax and employment records, the court noted that Debtor had a substantial non-exempt equity (based on Debtor's Schedules) that was not provided for in the proposed Chapter 13 Plan. *Id.*; Civil Minutes, Dckt. 20.
- B. Chapter 13 Case 14-26787, Represented by Same Counsel as in Current Case
 - 1. Filed: June 30, 2014
 - 2. Dismissed: May 6, 2015
 - a. The 2014 case was dismissed due to Debtor's defaults in the required plan payments. 14-26787; Order, Dckt. 22.

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:

Order Granting Motion to Dismiss

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

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

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

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

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

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

Sufficient 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 July 5, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,347.00 delinquent in plan payments (with another \$449.00 coming due before the hearing), which represents multiple months of the \$449.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

Sufficient 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 16, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee argues that Debtor did not commence making plan payments and is \$1,135.00 delinquent in plan payments (with another \$2,270.00 coming due before the hearing), which represents one month of the \$1,135.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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:

Order Granting Motion to Dismiss

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. [17-20021](#)-E-13 STEPHEN/LYNNE CLAVE MOTION TO DISMISS CASE
DPC-2 Julius Cherry 6-28-17 [\[58\]](#)

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$4,937.76 delinquent in plan payments (with another \$2,408.44 coming due before the hearing), which represents multiple months of the \$2,408.44 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

11. [17-21123-E-13](#) **VICTOR NAVARRO JR AND** **MOTION TO DISMISS CASE**
DPC-2 **KRISTINA ZAPATA** **6-16-17 [42]**
 George Burke

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

Sufficient 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 16, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,190.45 delinquent in plan payments (with another \$2,190.45 coming due before the hearing), which represents one month of the \$2,190.45 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on May 9, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay

in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

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

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

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 6, 2017. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,046.20 delinquent in plan payments, which represents multiple months of the \$1,750.00 plan payment.

JUNE 21, 2017 HEARING

At the hearing, the Trustee reported that two payments were scheduled but had not cleared yet. The Trustee requested that the hearing be continued. The court continued the hearing to 10:00 a.m. on July 26, 2017. Dckt. 83.

RULING

No further pleadings have been filed, and there is no evidence that the delinquency has been cured. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

13.	<u>14-27630</u> -E-13 DPC-1	ROSIE GOMEZ Gary Ray Fraley	CONTINUED MOTION TO DISMISS CASE 5-3-17 [28]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient 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 3, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$4,020.22 delinquent in plan payments (with another \$1,005.37 coming due before the hearing), which represents multiple months of the \$1,005.37 plan payment.

DEBTOR'S REPLY

Debtor filed a Reply on May 17, 2017. Dckt. 32. Debtor promises to file a modified plan and set it for hearing on June 27, 2017.

MAY 31, 2017 HEARING

At the hearing, the court noted that Debtor had proposed a modified plan and had set it for hearing. The court continued the hearing to 10:00 a.m. on July 26, 2017, to allow Debtor prosecute confirmation of the proposed modified plan. Dckt. 42.

RULING

A review of the docket shows that the court denied the proposed modified plan at the July 11, 2017 hearing. Dckt. 48. No additional plan has been proposed, and there is no evidence that the delinquency has been cured. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). The Motion is granted, and the case is dismissed.

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

Order Granting Motion to Dismiss

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

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

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

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

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

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,535.00 delinquent in plan payments (with another \$2,535.00 coming due before the hearing), which represents one month of the \$2,535.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 6, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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. [17-21730](#)-E-13 **MITCHELL LOGAN**
 Lucas Garcia

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
6-19-17 [66]

DEBTOR DISMISSED: 06/22/2017

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on June 21, 2017. The court computes that 35 days' notice has been provided.

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

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

The court having dismissed this bankruptcy case by prior order filed on June 22, 2017 (Dckt. 74), the Order to Show Cause is discharged as moot, with no sanctions ordered.

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

Order Discharging as Moot Order to Show Cause

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

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

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

16. [15-28234](#)-E-13 GREGORY/OTHELLA JONES CONTINUED MOTION TO DISMISS
DPC-1 Stephen Murphy CASE
5-3-17 [[39](#)]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on July 10, 2017, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$6,542.60 delinquent in plan payments (with another \$2,168.30 coming due before the hearing), which represents multiple months of the \$2,168.30 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

18. [17-22838](#)-E-13 LYUBOV ROMANOVICH ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
7-6-17 [29]

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

The Order to Show Cause was served by the Clerk of the Court on Debtor (*pro se*) and Chapter 13 Trustee as stated on the Certificate of Service on July 8, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case:\$76.00 due on June 26, 2017.

The Order to Show Cause is sustained, and the case is dismissed.

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

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

Order Sustaining Order to Show Cause

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

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

Sufficient 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 19, 2017. 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). Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

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

The Trustee seeks to have the case dismissed on the grounds that:

- A. Debtor failed to commence plan payments;
- B. Debtor failed to provide tax returns;
- C. Debtor failed to provide pay advices;
- D. Debtor failed to appear at the First Meeting of Creditors; and
- E. Debtor failed to provide the credit counseling certificate.

DISCUSSION

The Trustee argues that Debtor did not commence making plan payments and is \$75.00 delinquent in plan payments (with another \$75.00 coming due before the hearing), which represents one month of the \$75.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

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

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

The Trustee asserts that Debtor failed to file a Credit Counseling Certificate. The Bankruptcy Code requires that the credit counseling course be taken within a period of 180 days ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Federal Rule of Bankruptcy Procedure 1007(b)(3)(A), (C), and (D) and Rule 1007(c) require that a debtor file with the petition a statement of compliance with the counseling requirement along with either:

- A. an attached certificate and debt repayment plan;
- B. a certification under § 109(h)(3); or
- C. a request for a determination by the court under § 109(h)(4).

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:

Order Granting Motion to Dismiss

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.

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 11, 2017, Dckt. 25; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 25, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

Sufficient 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, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 18, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 12, 2017. Dckt. 120. Debtor states that the prior proposed plan was denied confirmation because it called for turning over 75% of tax refunds, whereas the Trustee wanted all of the tax refunds to be paid into the plan. Debtor states that none of the tax refund received this year has been turned over, making confirmation of a plan challenging.

Debtor's Counsel relates that he is "putting [a] thinking cap on" for this case, but neither he nor Debtor indicate that they plan to file an amended plan. Debtor's Declaration states that paperwork for tax refunds from 2013 and 2016 are "in processing mode," but she does not know when those funds will be disbursed. Dckt. 121.

TRUSTEE'S SUPPLEMENT

The Trustee filed a Supplement to the Motion on July 18, 2017. Dckt. 124. The Trustee argues that Debtor's declaration is not sufficient to justify a continuance of the hearing, the Trustee notes that Debtor has not explained why there has been a delay presenting an amended plan.

The Trustee notes that Debtor has filed a series of plans that have been denied confirmation, and he calculates that a plan from Debtor must average monthly payments of \$2,489.00 for thirty-six months to pay a proposed 7% distribution to unsecured claims. The Trustee does not believe that Debtor has enough funds to be able to pay her claims in thirty-six months, though, because Schedule I has not been updated to show current income supporting those payments and because Schedule J includes numerous living expenses that leave Debtor with \$1,800.00 in disposable income.

RULING

A new plan has not been proposed to the court, and neither Debtor nor her counsel have indicated how Debtor proposes to proceed with this case without a plan. Failure to seek confirmation of a plan timely is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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

Order Granting Motion to Dismiss

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

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

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

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

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

Sufficient 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 8, 2017. 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). Debtor filed opposition. If it appears at the hearing that disputed, material, factual issues remain to be resolved, then a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

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

The Chapter 13 Trustee has filed a Motion to Dismiss this case that is based on several independent grounds. First the Trustee argues that Debtor is delinquent \$2,000.00 in payments due the Trustee, with monthly plan payments of \$7,000.00 required. Second, the Trustee states that though the court denied confirmation of Debtor's prior Plan on April 25, 2017, Debtor had failed to file an amended plan and motion to confirm as of the June 8, 2017 filing of the present Motion. Motion, Dckt. 66.

DEBTOR'S OPPOSITION

On June 10, 2017, Debtor filed an Opposition to this Motion. Dckt. 73. In the Opposition, Debtor's counsel argues that Debtor will file and serve an amended Plan, and be current on such Plan. No reason is argued for the failure to file an amended plan and doing so only in response to the Motion to Dismiss. Debtor fails (or refuses) to provide any testimony in opposition to the Motion to Dismiss.

AMENDED PLAN

On July 18, 2017, one week before this hearing, Debtor filed a First Amended Chapter 13 Plan. Dckt. 78. Under the First Amended Plan, the basic terms are:

- A. Plan Payments through June 2017 (first four months of Plan) total \$21,000.
- B. Plan Payments for the remaining fifty-six months of the Plan are to be \$7,000.00 per month.

- C. At an unstated future date, Debtor will make a \$70,000 lump sum payment from sale of “Commercial Properties” as being the amount necessary to properly fund the Chapter 13 Plan.
- D. Class 1 Claims
 - 1. Sutter County.....\$1,105.00 per month
- E. Class 2 Claims
 - 1. Payments for Delinquent Property Taxes.....\$5,026.00 per month
- F. Class 3 Claims
 - 1. None
- G. Class 4 Claims
 - 1. None
- H. Class 5 Priority Claims
 - 1. California Franchise Tax Board Claim in the Amount of \$2,132.53
- I. Class 6 Special Treatment Unsecured Claims
 - 1. None
- J. General Unsecured Claims
 - 1. 100% dividend for \$11,556.73 of Claims.

In support of the Motion to Confirm the above Plan with the lump sum payment at a non-specific time from sale or sales for which no procedures for commercially reasonable sale are provided, Debtor’s testimony under penalty of perjury consists of:

- A. Debtor intends to sell unspecified “pieces of commercial property” at some future date during the sixty-month term of the Chapter 13 Plan. Plan, ¶ 3; Dckt. 77.
- B. Debtor provides her “legal opinion” that:
 - 1. “I believe that the plan complies with the applicable provisions of the bankruptcy code in that it provides for submission of a payment necessary for execution of the plan, provides for payment in full of all priority claims, and

requires that each claim within a particular class is to receive the same treatment.” Plan, p. 2:7–11; *Id.*

2. “Given my financial circumstances, I believe I am doing the very best I can in my Chapter 13 plan.” Plan, p. 2:11–12; *Id.*
3. “I have filed the plan in good faith, and without any other intention or any deceit.” Plan, p. 2:12–13; *Id.*

C. Debtor appears to not understand the terms of her plan, “testifying” under penalty of perjury:

“That the plan provides that the holder of each allowed secured claim provided for by the plan either; (1) accepted the plan, (2) retains the lien and securing such claim and the value, as of the effective date of the plan, of property to be distributed is not less than the allowed amount of such claim, or (3) I am surrendering the property securing such claim to such holder.”

Plan, p. 2:21–26.

On this point, Debtor merely recites the provisions of 11 U.S.C. § 1322(a)(5). No basis has been shown that Debtor has any knowledge of bankruptcy law or could make such statements. Rather, it appears this is manufactured testimony, with the Debtor being willing to sign whatever is put in front of her without regard to her having any actual knowledge.

D. “That I am able to make all payments under the plan. The primary source of my income for my household is from my business, wages, and rental income and I anticipate this income source for the remainder of the plan.” Plan, p. 3:1–3; *Id.*

Debtor and Debtor’s counsel have obviated the need for the court to make any findings of fact and conclusions of law on this point, providing the court with Debtor’s findings and conclusions without any factual financial testimony. Given that Debtor has already defaulted in the required Plan payments and not making one of the \$7,000.00 payments in the first four months of the Plan (and not providing any testimony as to where that \$7,000.00 has been diverted), such Debtor assurances ring hollow.

Debtor’s Inability to Prosecute A Bankruptcy Case

In denying confirmation of the prior proposed plan in this case, the court included a discussion of Debtor’s multiple prior non-productive bankruptcy cases. April 25, 2017 Civil Minutes, Dckt. 50. As stated in those prior Civil Minutes:

“Finally, Creditor argues that this Plan and bankruptcy case have not been filed in good faith. Creditor notes that this is Debtor’s fourth bankruptcy case in eight years with mere months existing between some of the filings. Creditor argues

that Debtor has been unable to confirm a plan through the cases and uses the cases and proposed plans to delay creditors from exercising their rights. The court's review of Debtor's bankruptcy cases reveals the following:

- A. Case No. 09-33215
 - 1. Chapter 13
 - 2. Filed on June 26, 2009
 - 3. Appeared in *pro se*
 - 4. No confirmed plan
 - 5. Dismissed on August 27, 2009
- B. Case No. 09-48498
 - 1. Chapter 11
 - 2. Filed on December 30, 2009
 - 3. Appeared in *pro se*
 - 4. No confirmed plan
 - 5. Dismissed on May 12, 2011
- C. Case No. 11-36557
 - 1. Filed as Chapter 13 on July 5, 2011
 - 2. Converted to Chapter 7 on March 19, 2012
 - 3. Represented by Anthony Hughes and Peter Macaluso
 - 4. No confirmed plan while in Chapter 13
 - 5. Discharged on March 16, 2017
- D. Case No. 17-20943 (present case)
 - 1. Chapter 13
 - 2. Filed on February 15, 2017

3. Represented by Peter Macaluso
4. No confirmed plan

Through four bankruptcy cases that have existed almost as one ongoing case, Debtor has experimented with various chapters of the Bankruptcy Code and has not yet proposed a plan that the court confirmed. Only by the court converting one of Debtor's cases to Chapter 7 was Debtor able to complete a case to discharge. The filing of the present case and plan does not appear to be in good faith pursuant to 11 U.S.C. § 1325(a)(3) & (7) given Debtor's history of proposing unconfirmable plans."

Here, Debtor has filed a Plan in opposition to the Motion to Dismiss in which she says figuratively: "(1) do not worry, I can make \$7,000.00 a month payments, even though I have already defaulted and seek to have waived a \$7,000.00 payment; and (2) though I have been continuously existing in bankruptcy since 2009 without paying creditors, during the next five years I will sell some property, at some time, for some amount." That is not a substantive, credible opposition to the present Motion. Rather, it demonstrates Debtor's desire to hide in bankruptcy, default, delay, and deflect creditors from enforcing their rights.

Review of Schedules

If Debtor's statements under penalty of perjury in her Schedules are taken as true, she owns real property with a value of \$1,328,047.00. Schedule A/B Real Property, Dckt. 11 at 3–10. Debtor lists owning fifteen different real properties (some with multiple addresses). For personal property assets, Debtor lists two claims that total \$1,000,000.00. Schedule A/B, *Id.* at 15.

On Schedule ,D Debtor lists property tax obligations as her secured debt, with those obligations totaling \$413,895.25. Schedule D, *Id.* at 19–25. For each of the properties listed, Debtor states that she has a significant equity above the secured property tax debt.

Though owning multiple properties and apparently (in Debtor's view) only owing property taxes that those properties secure, Debtor has not sought the appointment of a realtor or attempted to sell any properties in this bankruptcy case.

In Debtor's prior Chapter 13 Case, 11-36557, the court converted it to one under Chapter 7, at the election of Debtor, so that a fiduciary trustee could administer the assets and realize what value may actually exist. The Chapter 7 Trustee sold two properties, generating \$280,000.00 in sales proceeds. 11-36557; Trustee's Final Report, Dckt. 342. The Trustee paid \$190,295.04 in secured claims, \$55,118.92 in administrative expenses and priority claims, and \$10,201.03 in general unsecured claims. *Id.*

In looking at Schedule I in this case, Debtor purports to have gross income of \$1,289.14 as a bookkeeper. Schedule I, Dckt. 11 at 41. She then states receiving \$10,535.00 in Net Income from rental property or business. *Id.* at 42. Debtor states that she has \$1,026.00 in Social Security Income and an additional \$595.00 from a second bookkeeping job. *Id.* All told, Debtor states that she has \$13,333.67 in

Monthly Income (with only \$111.50 withheld from her bookkeeping job for taxes, Medicare, and Social Security).

On Schedule J, Debtor lists having three dependents who live with her: (1) a twenty-seven-year-old son, (2) a twenty-seven-year-old nephew, and (3) a twenty-eight-year-old nephew. *Id.* at 43. No income or financial contribution is shown on Schedule I for any of the “dependent” adults listed on Schedule J.

On Schedule J, Debtor lists having monthly expenses of \$6,333.67 for herself and the three adult dependents. *Id.* at 44. Debtor has no mortgage or rental expense. Debtor does list \$1,100.00 in food and housekeeping supplies for herself and the three dependent adults. Debtor’s most significant expense is \$3,847.00 for “monthly property taxes.”

The court could not identify the required statement showing the gross income from the real properties or business, the expenses, and how the net income is computed. On her Statement of Financial Affairs, Debtor states under penalty of perjury that her income from “wages, commissions, bonuses, tips” for 2015, 2016, and 2017 were each “\$0.00.” Statement of Financial Affairs Question 4; *Id.* at 46–47. No income is listed for any business or from any properties owned by Debtor. Debtor also states that during 2017 and the prior three years Debtor’s only other income was \$1,026.10 from Social Security. Statement of Financial Affairs Question 4; *Id.* at 47.

Debtor’s statements under penalty of perjury are different on the Chapter 13 Calculation of Disposable Income (Form 122C-2). *Id.* at 56–64. Debtor does assert that the number of people in her family unit for computing deductions and median income is four persons. *Id.* at 65. Debtor then computes her Current Monthly Income to be \$7,958.00 and her allowable expenses to be (\$12,380.50), which she then uses to establish that her projected monthly income is properly computed to be (\$4,422.50). *Id.* at 62–63.

In requesting his fees in the prior Chapter 7 case, the Trustee stated:

“The Debtor owned an interest in 18 parcels of real property, including residences, rental properties, an office building, vacant lots and farm land. The ownership of these properties were complicated by a multitude of factors, including the joint ownership of some of the parcels with the Debtor’s non-filing spouse, numerous liens, and encumbrances, including abstract of judgment and tax liens, on some of the parcels, **and the Debtor’s failure to cooperate in providing information to Fukushima [the Chapter 7 Trustee] regarding the leases on the rental properties.** Fukushima conducted an in-depth review of the preliminary title reports on the parcels and consulted with counsel regarding the feasibility of administering them.

Fukushima attempted to obtain copies of rental agreements, turnover of rents, and additional information regarding the parcels **but the Debtor was unresponsive.** Ultimately, it became necessary for Fukushima to request counsel prepare and send demand letters to the Debtor for the information.

The **Debtor continued to provide very little useful information and it became necessary to obtain the information from the tenants and creditors directly.**

11-36557; Motion for Trustee Fees, p. 2:24–25.5 and 3:1–8, Dckt. 331 (emphasis added).

Then, in discussing Debtor’s efforts to resolve her claims, the Chapter 7 Trustee further states in the Motion for Trustee Fees:

“Throughout the administration of this case, the **Debtor made several attempts to ‘settle’ the bankruptcy case claiming she would pay all of the unsecured claims and the administrative expenses in full.** On several occasions, Fukushima and his counsel compiled, prepared and delivered to the Debtor the information requested, including estimates of the amount necessary to pay in full all unsecured creditors and all administrative expenses.

The **Debtor would either fail to respond, unable to be contacted, or she would make an offer that was totally inadequate.** No agreement was ever reached so Fukushima continued to list and sell the bankruptcy estate’s remaining properties.”

Id. at 3:11–16 (emphasis added).

The court has also reviewed the Civil Minutes for the ruling on Sutter County’s Motion for Relief From the Automatic Stay. That ruling discusses some of the Debtor’s “bankruptcy litigation strategy” and “use” of the bankruptcy laws, including:

“While Debtor’s counsel argues that insurance has been obtained and presented as an unauthenticated exhibit, there is no credible, admissible evidence of any such insurance. **Debtor did not (or would not) provide any simple testimony in opposition to the Motion.** While Debtor’s counsel asserts that it is “easy” to show that there is insurance by an unauthenticated insurance statement, just filing exhibits with the court is not the proper, or credible (to the court) way to present evidence.

This becomes more significant in that **Debtor fails to provide any testimony and facts about why or how she can prosecute any feasible plan** in this bankruptcy case. Debtor offers no testimony for the court to conclude that she filed and is prosecuting this case in good faith.

...

As has been shown, **Debtor has been “challenged” to propose and prosecute any plan in her bankruptcy cases.** While professing there being a substantial equity in properties, she has been **incapable of marketing and selling any properties.** She **was incapable, or chose not to, get her Chapter 7 discharge for years—preserving** the automatic stay while the Chapter 7 Trustee administered properties of the estate. Then, she sought the discharge only after she filed the current case.

...
Though claiming to have \$10,535.00 in monthly net income, **Debtor states on Schedules I and J that she pays no more than \$115.00 per month** for state and federal income and self-employment taxes.

Debtor has not sought to employ any real estate brokers or make any effort to sell any properties to fund a Chapter 13 plan. What Debtor's conduct shows is that she **intends to** stay in Chapter 13 and **gamble, with creditor's money**, that property values will rise, allowing her to reap the reward without any risk. If the market does not rise, or if it drops, the creditors will suffer the loss. . . ."

Civil Minutes, p. 5, 9, 10; Dckt. 59

GRANTING OF MOTION

If Debtor desired to preserve what she believes is a substantial equity in the numerous properties, she would be acting to do so, not merely delay addressing the secure claims and promising payments on which she has already defaulted. Debtor would provide the court with sufficient, accurate information showing the actual gross income from the properties and all of the expenses she pays in the operation of that real estate business.

Debtor's Opposition is little more than to keep the status quo, based on inaccurate and incomplete financial information.

This situation of Debtor having secured debt to be addressed is not a new phenomenon. In dismissing Debtor's 2009 Chapter 11 case, this court concluded:

"From the court's review of Schedule A, it is apparent that there is significant equity that a Chapter 7 Trustee could liquidate for the benefit of creditors. However, the vast majority of claims filed by creditors are for secured claims and there are *di minimis* general unsecured claims filed in this case. The court therefore finds that dismissal of this case to a proceeding under Chapter 11 is in the best interests of creditors."

09-48498; Civil Minutes for May 12, 2011 hearing, Dckt. 130 at 3. Though the court gave Debtor the benefit of the doubt to "save" her from Chapter 7 liquidation in the 2009 case, Debtor's failings in her 2011 case led to the conversion to Chapter 7. It appears that Debtor's valuation of the properties may not be accurate because the Chapter Trustee was not able to easily liquidate the properties. Debtor not having been able to address these secured claims in the past eight years, Debtor's promise that it will be done, sometime in the next five years rings hollow.

The Motion is granted, and the bankruptcy case is dismissed.

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

Order Granting Motion to Dismiss

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 bankruptcy case is dismissed.

23. [17-23544](#)-E-13 **JOE/CARRIE MATTHEWS** **MOTION TO DISMISS CASE**
DPC-2 **Mohammad Mokarram** 7-10-17 [\[22\]](#)

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.

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

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

Sufficient 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 July 10, 2017. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$940.00 delinquent in plan payments (with another \$940.00 coming due before the hearing), which represents one

month of the \$940.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

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

- A. Six months of profit and loss statements,
- B. Six months of bank account statements,
- C. Proof of license and insurance or written statement that no such documentation exists,
- D. A list of business assets and equipment including all tools and machinery,
- E. A list of employees, and
- F. A list of accounts receivable owed to Debtor.

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

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:

Order Granting Motion to Dismiss

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

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

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

24. [14-28945](#)-E-13 ELAINE BELDIN-REED MOTION TO DISMISS CASE
DPC-1 James Keenan 7-6-17 [\[25\]](#)

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

25. [17-23045](#)-E-13 THERESA PHILLIPS MOTION TO DISMISS CASE
DPC-1 Michael Hays 7-5-17 [\[21\]](#)

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

26. [15-29850](#)-E-13 JESUS/SANDY MARTINEZ MOTION TO DISMISS CASE
DPC-1 Thomas Gillis 6-27-17 [\[40\]](#)

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on July 19, 2017, Dckt. 55; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the response filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 55, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

27.	<u>17-22150-E-13</u> DPC-3	JAMES SMITH Matthew DeCaminada	CONTINUED MOTION TO DISMISS CASE 5-23-17 [26]
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Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 7, 2017, Dckt. 65; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be

dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 65, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

28. [15-24851](#)-E-13 **WALTER ALLEN** **CONTINUED MOTION TO DISMISS**
DPC-1 **Pro Se** **CASE**
3-1-17 [\[30\]](#)

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.

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

Sufficient 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 1, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Walter Allen ("Debtor") is in material default under the Plan because it will complete in eighty-three months with the current 100% dividend owed to unsecured claims. The general unsecured claims filed are \$12,530.51 greater than scheduled. Section 5.03 of the Plan makes that failure to timely complete the Plan a breach in addition to violating the Bankruptcy Code. Failure to provide for those claims puts Debtor in material default of the confirmed Plan. *See* 11 U.S.C. § 1307(c).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on March 6, 2017. Dckt. 34. Debtor states that he has filed a modified plan to account for the excess unsecured claims and that a motion to confirm that plan has been set for hearing on April 18, 2017.

PRIOR REVIEW OF MODIFIED PLAN AND CORRESPONDING PLEADINGS

Debtor has filed a Modified Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Modified Plan and the Declaration in support filed by the Debtor. Dckts. 37 & 39.

The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity). However, the Declaration fails to provide testimony as to facts to support confirmation based upon the Debtor's personal knowledge. FED. R. EVID. 601, 602. Some of the more significant deficiencies in the Declaration and lack of testimony by Debtor are:

- A. Debtor has no knowledge as to what changes are in the Plan and why it was filed. She only is "informed and believes," and thereon "alleges." Debtor does not provide any testimony in Part A of the "declaration." Plan, p. 1:24–28, 2L1–4; Dckt. 39.
- B. In Part B of the "declaration," Debtor again can only be "informed and believes," stating no personal knowledge for which she can testify. To the extent she is "informed and believes," it is solely based on "information" from her attorney. *Id.*, p. 2:3–5.
- C. Debtor, purporting to testify under penalty of perjury:
 - 1. Provides the court with her legal opinion that the Plan complies with all of the provisions of Chapter 13 and the Bankruptcy Code. She further purports to provide her legal opinion that the Plan complies with all applicable non-bankruptcy law. *Id.*, p. 2:5–9.
 - 2. By her personal finding of fact, the Plan meets the Chapter 7 Liquidation Test." Other than stating her personal finding of fact, Debtor fails (or is unable) to provide any personal knowledge testimony as to the assets and liabilities in this case. *Id.*, p. 12–17.
 - 3. That she has no idea how the secured claims are provided for under the Plan, with Debtor merely parroting the statutory alternative methods of providing for secured claims in the Plan. *Id.*, p. 2:18–28, 3:1–6.

Though this Plan provides for a 100% dividend on general unsecured claims, the court notes that the financial information provided by Debtor is now almost two years old. Debtor failing (or refusing) to provide any actual personal knowledge testimony and demonstrating a lack of any knowledge of what his plan provides for paying secured claims (merely parroting the statutory language of alternative treatment) puts not only his ability to perform the plan in question, but also his good faith in prosecuting this case.

On Schedule I, Debtor lists having \$8,434.37 in wages. Dckt. 1 at 21. On Schedule J Debtor listing having one dependent, a minor grandchild. After withholding and expenses, Debtor states he has \$493.04 in monthly net income. The Amended Plan incorporates the prior plan payment of \$370.00 per

month through February 2017, and then increases the Plan payments to \$500.00 per month for the remaining forty months of the Plan.

The Plan does not provide for any Class 1, Class 2, Class 3, Class 5, or Class 6 Claims. In Class 4, Debtor states that he is current on his two mortgage payments and will continue to pay them, notwithstanding there being a negative equity in the Property.

The court cannot identify, from the current or prior confirmed plan why Debtor is in this Chapter 13 case. He has the ability to pay his creditors and had no defaults to cure (having provided for Class 4 plan payment treatment for all his secured claims).

Debtor, on December 12, 2016 filed a Motion to have the court approve a modification of the loan with Wells Fargo Bank, N.A. On the Plan and Schedule D, Debtor lists Wells Fargo Bank, N.A. having two secured claims. Motion, Dckt. 19. The Motion states that the then-current monthly mortgage payment to be modified was \$1,985, and the modification would decrease it to \$1,536, crediting additional monthly net income of \$450.00 per month. *Id.* at 2:14–16. Strangely, this stated monthly payment of the loan to be modified was \$100 per month more than stated on the original confirmed plan in this case. Dckt. 36. The court granted the Motion and authorized Debtor to reduce his monthly mortgage expense by \$450.00 per month.

For the Proposed Modified Plan, Debtor continues to state that the Class 4 payment to Wells Fargo Bank, N.A. on the modified loan is \$1,878—not the reduced \$1,536.00. Dckt. 36 at 4. Debtor’s lack of honest, truthful, personal knowledge about his current finances does not appear to be in good faith, but part of a coordinated effort with counsel to mislead the court.

MARCH 29, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, to allow Debtor to prosecute a motion to confirm, including filing a supplemental declaration. Dckt. 41.

DEBTOR’S OPPOSITION AND REQUEST FOR CONTINUANCE

Debtor filed an Opposition on May 15, 2017. Dckt. 55. Debtor’s Counsel states that Debtor opposes the Motion—without giving any reason—and notes that there is a motion for Debtor’s Counsel to withdraw set for hearing at 3:00 p.m. on June 6, 2017. Debtor’s Counsel states that Debtor may be unable to process a modified plan before that date, and he requests a continuance to a hearing time after June 6, 2017.

MAY 31, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on June 21, 2017. Dckt. 58.

ORDER RESETTING HEARING

On June 12, 2017, the court issued an Order Resetting Hearing for this matter to be heard at 10:00 a.m. on July 26, 2017. Dckt. 64.

JUNE 21, 2017 HEARING

At the hearing, the court announced that the hearing had been continued to 10:00 a.m. on July 26, 2017, pursuant to the Order Resetting Hearing. Dckt. 68.

DISCUSSION

No further pleadings have been filed regarding this Motion, and no modified plan has been proposed to the court.

Grounds exist for dismissing this case. Far more serious relief may also be warranted because of Debtor's misstatement and hidden \$450.00 of additional projected disposable income. Additionally, Debtor's "testimony" consisting of merely signing a "declaration" quoting generic language from the Bankruptcy Code is a subject to be further addressed.

The Motion is granted, and the bankruptcy case is dismissed. To avoid Debtor believing that dismissal is a tactical advantage to further abuse the federal courts, dismissal of the case does not remove jurisdiction of this court to address the conduct of Debtor and his former counsel in this case.

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

Order Granting Motion to Dismiss

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 bankruptcy case is dismissed.

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

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

Sufficient 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 14, 2017. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on February 28, 2017. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

DEBTOR'S OPPOSITION

Debtor filed an Opposition on April 19, 2017. Dckt. 32. Debtor anticipates that the Internal Revenue Service will amend its claim based upon Debtor's 2013 federal income tax return that has been submitted for review. Debtor believes that a modified plan will be filed before the hearing date for this Motion.

MAY 31, 2017 HEARING

At the hearing, the court continued the hearing to 10:00 a.m. on July 26, 2017. Dckt. 36.

ORDER VACATING ORDER DATED JUNE 5, 2017

On June 5, 2017, the court entered an order dismissing this case. Dckt. 38. The court reviewed the files in this case and noticed that the issuance of that order was a clerical error. Accordingly, the court vacated the order dismissing this case. Dckt. 40.

RULING

No further pleadings have been filed in this case, and no new plan has been proposed. Unfortunately for Debtor, a promise to file a modified plan is not evidence of filing a modified 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:

Order Granting Motion to Dismiss

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.	17-20551 -E-13	TERRI CARTER	MOTION TO DISMISS CASE
	DPC-3	Matthew DeCaminada	6-9-17 [32]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

**APPEARANCE OF MARIA DE LA CRUZ
REQUIRED AT THE JULY 26, 2017 HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

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

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

Sufficient 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 27, 2017. By the court's calculation, 65 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and has not proposed to make any according to the plan filed on February 17, 2017. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

The Trustee argues that Debtor did not notice all interested parties of the Chapter 13 Plan and set a confirmation hearing. Debtor offers no explanation for the delay in setting a plan for confirmation. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

TRUSTEE'S STATUS UPDATE

The Trustee filed a Status Update on May 18, 2017. Dckt. 81. The Trustee reports that Debtor did not appear at the continued Meeting of Creditors on April 6, 2017, or on May 4, 2017. Debtor has not made plan payments still, and Debtor's plan has not been served.

The Trustee states that he received a telephone call from Debtor's attorney on May 5, 2017, advising that he is ill and has been in and out of the hospital, which has hindered his ability to adequately represent debtors at this time.

MAY 31, 2017 HEARING

At the hearing, attorney Eric Schwab made a courtesy appearance for Debtor's counsel. He reported that Debtor's counsel is in hospice and is not expected to survive. Mr. Schwab reported that he will be substituting in as counsel for Debtor in this case.

The Trustee concurred in a recommendation that the hearing be continued to afford Debtor and her new counsel time to resume in prosecuting this case. The court continued the hearing to 10:00 a.m. on June 21, 2017. Dckt. 86.

JUNE 21, 2017 HEARING

At the hearing, the court announced that the circumstances of this case warrant continued the hearing on the Motion one final time. The court continued the hearing on the Motion to 10:00 a.m. on July 26, 2017, and ordered Debtor to appear personally at the continued hearing. Dckts. 93 & 96.

RULING

No further pleadings have been filed since the June 21, 2017 hearing. A review of the docket shows that the continued Meeting of Creditors was held on June 29, 2017, and the Trustee reports that neither Debtor nor her counsel appeared at the meeting.

While the health of Debtor's attorney is unfortunate, Debtor has failed to appear at the Meeting of Creditors several times and has not made any plan payments to the Trustee.

At the hearing, xxxxxxxxxxxxxxxxxxxxxxxxx.

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:

Order Granting Motion to Dismiss

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

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

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

32. [17-23252-E-13](#) **STEVEN/STACI CAMILLUCCI** **ORDER TO SHOW CAUSE - FAILURE**
 Matthew DeCaminada **TO PAY FEES**
 5-26-17 [14]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on May 28, 2017. The court computes that 59 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$310.00 due on May 12, 2017.

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

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

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

Order Discharging Order to Show Cause

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

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

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

33. [17-23354](#)-E-13 **CHIA CHOU** **MOTION TO DISMISS CASE**
DPC-2 **Peter Macaluso** **7-6-17 [38]**

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

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$8,940.00 delinquent in plan payments (with another \$8,940.00 coming due before the hearing), which represents one month of the \$8,940.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. **Debtor did not present any 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:

Order Granting Motion to Dismiss

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Motion to Dismiss is denied without prejudice.

Debtor has filed an Amended Plan and Motion to Confirm. The court has reviewed the Motion to Confirm the Amended Plan and the Declaration in support filed by Debtor. Dckts. 62, 64. The Motion appears to comply with Federal Rule of Bankruptcy Procedure 9013 (stating grounds with particularity), and the Declaration appears to provide testimony as to facts to support confirmation based upon Debtor's personal knowledge. FED. R. EVID. 601, 602.

Debtor appearing to be actively prosecuting this case, the Motion to Dismiss is denied without prejudice.

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

Order Denying Without Prejudice Motion to Dismiss

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.

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

Sufficient 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 19, 2017. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

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

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

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

Order Granting Motion to Dismiss

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.	<u>16-28365</u> -E-13 DPC-2	BARBARA GIAMMARCO Lucas Garcia	CONTINUED MOTION TO DISMISS CASE 5-2-17 [<u>35</u>]
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient 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 2, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,873.23 delinquent in plan payments (with another \$2,100.00 coming due before the hearing), which represents multiple months of the \$2,100.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on April 4, 2017. A review of the docket shows that Debtor has filed a new plan or a motion to confirm a plan.

TRUSTEE'S RESPONSE

The Trustee filed a Response on May 22, 2017. Dckt. 48. The Trustee states that Debtor is \$778.23 delinquent in plan payments under the amended plan.

MAY 31, 2017 HEARING

At the hearing, the court noted that Debtor had proposed a modified plan for confirmation, and the court continued the hearing to 10:00 a.m. on July 26, 2017, to allow Debtor to prosecute the new plan. Dckt. 53.

RULING

At the July 11, 2017 hearing the court denied Debtor's proposed Amended Plan. No further pleadings have been filed regarding this Motion, and no plan is pending 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:

Order Granting Motion to Dismiss

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

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

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

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

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$5,496.00 delinquent in plan payments (with another \$1,749.00 coming due before the hearing), which represents multiple months of the \$1,749.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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. [17-20775-E-13](#) **JAMES/ROSINA MARKS** **MOTION TO DISMISS CASE**
 DPC-1 **Eric Schwab** **6-16-17 [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.

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

Sufficient 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 14, 2017. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor 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 9, 2017. Debtor filed a response on July 12, 2017, explaining that the delay in filing a motion to confirm an amended plan was caused by a dispute whether Debtor was current on mortgage payments on the petition date and that the creditor had not amended its proof of claim. Dckt. 29. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. That is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor has filed an Opposition that asserts that the delay in filing a plan results from there being a "dispute" on whether they are current on the claim secured by their residence. Dckt. 20. Debtor provides testimony to this effect. Declaration, Dckt. 21.

Unfortunately, Debtor's "we will not file a plan until the creditor agrees we are current" is not an adequate explanation for why this case is now six months old with no plan being proposed. If litigation

is going to be required for Debtor to enforce Debtor's rights under the Bankruptcy Code and contract (which presumably includes an attorney's fee provision), then that litigation is built into the 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:

Order Granting Motion to Dismiss

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

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

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

40.	<u>17-23176-E-13</u> DPC-1	LETICIA TOPETE Pro Se	MOTION TO DISMISS CASE 6-28-17 <u>[27]</u>
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Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

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

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$1,000.00 delinquent in plan payments (with another \$1,000.00 coming due before the hearing), which represents one

month of the \$1,000.00 plan payment. 11 U.S.C. § 1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. Debtor presented no opposition to the Motion.

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

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

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

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:

Order Granting Motion to Dismiss

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

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

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

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

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$8,335.65 delinquent in plan payments (with another \$2,211.13 coming due before the hearing), which represents multiple months of the \$2,211.13 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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. [15-28582](#)-E-13 LYNN SANSOM MOTION TO DISMISS CASE
DPC-4 Gerald Glazer 6-27-17 [[79](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

43. [16-24782](#)-E-13 LISA FERNANDES MOTION TO DISMISS CASE
DPC-1 Mohammad M. Mokarram 7-6-17 [[20](#)]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed a Notice of Dismissal, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on July 18, 2017, Dckt. 33; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the conversion filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 33, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

44. 17-22982-E-13 **SANDRA AVILA**
Michael Hays

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
7-6-17 [23]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 13 Trustee as stated on the Certificate of Service on July 8, 2017. The court computes that 18 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$77.00 due on June 30, 2017.

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

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured. July 21, 2017 Clerk's Office Docket Entry Report.

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

Order Discharging Order to Show Cause

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, with no sanctions issued pursuant thereto. The bankruptcy case shall proceed in this court.

45. [17-22982](#)-E-13 **SANDRA AVILA** **MOTION TO DISMISS CASE**
 DPC-1 **Michael Hays** **7-5-17 [19]**

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

46. [17-23283](#)-E-13 **KATHLEEN HEDICKE** **MOTION TO DISMISS CASE**
 DPC-2 **Ronald Holland** **6-28-17 [22]**

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

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

Order Dismissing as Moot Motion to Dismiss

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

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

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

47. [17-20488](#)-E-13 PHILLIP/REHEMA PETE MOTION TO DISMISS CASE
DPC-2 Pro Se 6-9-17 [54]

DEBTOR DISMISSED:

06/14/2017

JOINT DEBTOR DISMISSED:

06/14/2017

Final Ruling: No appearance at the July 26, 2017 hearing is required.

The Chapter 13 Trustee having filed a Notice of Dismissal, 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.**

48. [16-28092](#)-E-13 GEORGE GATICA MOTION TO DISMISS CASE
DPC-1 Mikalah Liviakis 7-6-17 [18]

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

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

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

Sufficient 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 July 6, 2017. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$6,037.39 delinquent in plan payments (with another \$1,887.39 coming due before the hearing), which represents multiple months of the \$1,887.39 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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

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

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

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

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

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

Sufficient 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 July 3, 2017. 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). Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

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

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

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

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

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

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

Order Granting Motion to Dismiss

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. [15-27694](#)-E-13 MICHELE LEON MOTION TO DISMISS CASE
DPC-1 Mikalah Liviakis 7-5-17 [\[23\]](#)

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

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

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

Sufficient 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 July 5, 2017. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$1,497.00 delinquent in plan payments (with another \$499.00 coming due before the hearing), which represents multiple months of the

\$499.00 plan payment. Failure to make plan payments is unreasonable delay that is prejudicial to creditors.
11 U.S.C. § 1307(c)(1).

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

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

Order Granting Motion to Dismiss

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.

51. [13-29395](#)-E-13 **FRANK/GRACE MURPHY** **MOTION TO DISMISS CASE**
DPC-7 **Paul Bains** 7-5-17 [[106](#)]

Final Ruling: No appearance at the July 26, 2017 hearing is required.

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

The Chapter 13 Trustee having filed an Ex Parte Motion to Dismiss the pending Motion on July 19, 2017, Dckt. 112; no prejudice to the responding party appearing by the dismissal of the Motion; the Trustee having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by Debtor; the Ex Parte Motion is granted, the Trustee's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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

Order Dismissing Without Prejudice Motion to Dismiss

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

The Motion to Dismiss the Chapter 13 Case filed by the Trustee having been presented to the court, the Trustee having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 112, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

52.	<u>17-23636</u> -E-13	RENE/STEFANIE PAEZ Mohammad Mokarram	STATUS CONFERENCE RE: MOTION TO DISMISS CASE 7-12-17 <u>[20]</u>
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Debtors' Atty: Mohammad Mokarram

Notes:

Set by order of the court dated 7/19/17 [Dckt 23]; status reports may be presented orally

JULY 26, 2017 STATUS CONFERENCE

At the July 26, 2017 Status Conference xxxxxxxxxxxxxxxxxxxxxxxxx.

Order for Status Conference

On July 12, 2017, Debtor filed an Ex Parte Motion to Dismiss this bankruptcy case. Dckt. 20. The grounds stated in the Motion are that Debtor "can't afford the higher plan payments the trustee recommends." Motion, p. 1:17.5; Dckt. 20. Debtor asserts the almost absolute right to dismiss this case pursuant to 11 U.S.C. § 1307(b). *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764, 773–74 (9th Cir. 2008); *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 127 S.Ct. 1105, 166 L. Ed. 2d 956 (2007).

Here, the Motion to Dismiss arises because of the Trustee's Objection to Confirmation (Dckt. 15). That Objection does not merely dispute Debtor's computation of projected disposable income, but raises issues of inaccurate information stated by Debtor under penalty of perjury in this case.

The court ordered the Status Conference to be conducted to afford the parties in interest a prompt forum to address the court's concerns. Order, Dckt. 23.