

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge
Sacramento, California

September 4, 2013 at 10:00 a.m.

1. [13-25504](#)-C-13 MARIBEL SHEHADEH MOTION TO DISMISS CASE
TSB-2 W. Steven Shumway 8-7-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,475.00 delinquent in plan payments, which represents one month of the \$2,475.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1).

The Trustee's Motion argues that the Debtor has caused unreasonable delay in filing a new plan. The case was filed on April 22, 2013 and the Debtor has yet to confirm a Plan. The Trustee's Objection to Confirmation was heard and sustained on July 2, 2013 and the Debtor has failed to amend the Plan and set a confirmation hearing to date. 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

September 4, 2013 at 10:00 a.m.

holding that:

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

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

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

2. [13-26421](#)-C-13 SHARON BORDEN MOTION TO DISMISS CASE
TSB-1 Deepak S. Parwatikar 8-6-13 [[47](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,002.00 delinquent in plan payments, which represents multiple months of the \$501.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

Debtor's Opposition

Debtor opposes Trustee's Motion on the following grounds:

(1.) Debtor provided Trustee with her 2011 Federal Tax Return and proof of extension of time to file a 2012 Tax Return.

(2.) Debtor provided Trustee with Debtor's non-filing spouse's pay advices dated May 23, 2013 through July 11, 2013.

(3.) Debtor cured the delinquent plan payments by sending a cashier's check to the Trustee.

(4.) Debtor will be current under all payments called for by the amended plan as of the date of the hearing on this motion.

The Debtor offers no evidence, either in the form of a declaration or properly authenticated documentary evidence, in support of the contentions made in the Opposition. The Opposition consists merely of counsel's arguments. Further, if the Debtor is correct and the first two grounds for dismissal have been resolved, the Debtor has not addressed why there have been defaults in the payments, why such defaults will not occur in the future, and how the Debtor, who is providing all of her Monthly Net Income to fund the Plan, can have "extra" income in a month to cure the arrearage. FN.1.

FN.1. The First Amended Chapter 13 Plan filed on July 30, 2013, requires \$2,030.00 a month (for months 3 through 60 of the Plan, with payments of \$501.00 a month for months 1 and 2 of the Plan) in payments from the Debtor. Plan, Dckt. 35. Of this, \$1,896.00 is to be paid to Wells Fargo Bank, N.A. for its Class 1 Claim which is secured by the Debtor's residence. The Plan provides for 0.00% dividend to creditors holding Class 1 general unsecured claims. Accepting as true the Debtor's statements of income and expenses on Schedule I (Dckt. at 13) and Amended Schedule J (Dckt. 36), the Debtor's Monthly Net Income is only \$2,030.00. To generate this Monthly Net Income the Debtor and her husband have monthly expenses of only (1) electricity and gas expense of \$100, (2) water and sewer of \$25, (3) food of \$200, (4) clothing of \$15, (5) laundry and dry cleaning of \$0, (6) medical and dental of \$0, (7) transportation(not including car payments) of \$125, (8) recreation of \$0, (9) health insurance of \$0, and (10) business expenses (for the Debtor's self-employed candy business which generates \$83 a month gross income) of \$0.

The expenses listed cause the court significant concern regarding not only the feasibility of the Plan but the Debtor's statements being provided to the court in the prosecution of this case. These expenses appear to be so unreasonable that they could well be "manufactured expenses" to create the appearance that a plan could be feasible. Rather than showing that the plan is feasible, such statements under penalty of perjury demonstrate that the Plan is doomed to failure. In other context, the court has referred to declarations provided in support of confirmation of Chapter 11, 12, and 13 plans which state unreasonable expenses or unsupported income as "liar declarations."

The Debtor not having provided the court with evidence that the proposed payments are current, the reason for the defaults, why such defaults will not occur in the future, and where the Debtor obtained the monies to cure the defaults, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

3. [13-25223](#)-C-13 LOIS PARRISH MOTION TO DISMISS CASE
TSB-2 Mohamad R. Pejuhesh 8-7-13 [[33](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee's Motion argues that the case was filed on April 16, 2013 and the Debtor has yet to confirm a plan. The Trustee's Objection to

Confirmation was heard and sustained on July 2, 2013 and the Debtor has not amended the Plan and set a confirmation hearing to day. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor filed a statement of non-opposition stating she does not intend to oppose the Motion to Dismiss because of an ongoing dispute with a creditor that prohibits creating a feasible Chapter 13 plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed. The court shall issue a minute order substantially in the following form holding that:

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

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

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

4.	<u>13-26025</u> -C-13 DAWN EFIMOFF Mikalah R. Liviakis	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-26-13 [<u>24</u>]
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Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$152.00 due on July 1, 2013). The court docket reflects that on August 1, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

Local Rule 9014-1(f)(2) Motion - Opposition Filed

Correct Notice Provided. No Proof of Service was filed on the court's docket. However, it appears that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 2013. Debtor filed a response to Trustee's Motion, indicating it received service. 14 days' notice is required. That requirement was likely met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtors, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Trustee moves to have Debtor's case dismissed on the following grounds:

(1.) Debtors have not filed tax returns for 2010 and 2011 based on a claim filed by the Internal Revenue Service filed on July 18, 2013 (Claim #1-1). The last four years of tax returns have not been filed. See 11 U.S.C. §§ 1308 & 1325(a)(9).

(2.) Moreover, Debtors are not entitled to Chapter 13 relief under 11 U.S.C. § 109(e). According to the IRS Claim #1-1, the unsecured portion of the claim totals \$413,883.07, which exceeds the unsecured debt limit of \$383,175.00.

Debtor's Opposition

Debtors Oppose Trustee's Motion to Dismiss on the following grounds:

(1.) In May 2013, Debtors filed late *joint* tax returns for 2010 and 2011. The IRS Claim #1-1 bears the social security number for Debtor F. Huerta and shows no return under the social security number for Debtor H. Huerta. Therefore, Debtors argue the claim is erroneous on its face and cannot be used in support of Trustee's Motion.

(2.) The IRS Claim is erroneous and cannot be used a basis for alleging that the debt claims exceeds the limits of 11 U.S.C. § 109(e). Debtor argues based on *In re Scovis*, where the 9th Circuit determined that eligibility under 11 U.S.C. § 109(e) should "normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." 249 F.3d 975, 982 (9th Cir. 2001).

Despite Debtors contentions, they have not provided the court with evidence, beyond Debtor H. Huerta's declaration, demonstrating that the 2010 and 2011 tax returns were filed. Debtor does not address the additional two years of tax returns Trustee claims were not filed. Therefore, cause exists to dismiss this case. Additionally, the Debtors have not shown that the Internal Revenue Service Proof of Claim is not in good faith. The court will not ignore a proof of claim. The Debtors list a \$38,371.00 claim for the Internal Revenue Service on Schedule E. Dckt. 1.

The motion is granted and the case is dismissed.

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

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

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

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

6. [12-20030](#)-C-13 SHERMAN/MAXINE THOMPSON MOTION TO DISMISS CASE
TSB-1 Scott J. Sagaria 8-7-13 [[46](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee moves to dismiss Debtors' case on the following grounds:

(1.) Debtor did not provide for the Priority claim of the Franchise Tax Board (Claim #30) in the amount of \$13,501.88, of which \$10,694.52 was priority. Section 3.18 of the Plan makes this failure a material breach.

(2.) Based on Trustee's calculations, Debtors' Plan will complete in 76 months, as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The filed priority claim of the IRS was \$11,160.10 greater than scheduled in the plan.

Debtor's Response

In response to Trustee's Motion, Debtors state they will be objecting to the Proof of Claim filed by the IRS and Franchise Tax Board. The IRS Proof of Claim alleges that 2010 and 2011 federal income returns have not been filed when Debtors allege they were filed. The Franchise Tax Board Proof of Claim alleges that a 2010 state income tax return was not filed when Debtors allege it was filed.

Debtors oppose this Motion stating that they intend on contesting the two claims that form the basis for Trustee's Motion to Dismiss. However, in the 20 months this case has been pending the Debtors took no action to object to the claim. Only, facing the dismissal of the case, did the objection to the proof of claim become of sufficient concern for the Debtors to prosecute this case. The Internal Revenue Service Proof of Claim was filed on March 2, 2012. Proof of Claim No. 12.

The Debtors have not prosecuted this case in good faith. If they desired to object to the claim, they would have objected to the Proof of Claim sooner and not waiting until the eve of dismissal. No evidence is presented in opposition to the Motion, but merely arguments of counsel.

Proper grounds exist for dismissal of this Chapter 13 case. No reason has been provided for why, over a period of 18 months since the Proof of Claim was filed by the Internal Revenue Service which dooms the Plan, that the Debtors took no action to object to the claim.

The Court grants the Trustee's Motion and dismisses the Chapter 13 case.

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

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

The Motion 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.

7. [12-21732](#)-C-13 BRIAN/JASMINE JEW MOTION TO DISMISS CASE
TSB-2 Eric J. Gravel 8-7-13 [[71](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss, 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 was dismissed without prejudice, and the matter is removed from the calendar.**

8. [13-23632](#)-C-13 ROBERT CORONADO MOTION TO DISMISS CASE
TSB-2 Scott D. Hughes 8-7-13 [[42](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,775.00 delinquent in plan payments, which represents multiple months of the \$2,250.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

9. [13-21537](#)-C-13 ROBERT/MARLEEN COVINGTON MOTION TO DISMISS CASE
TSB-2 W. Steven Shumway 8-7-13 [[89](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 2, 2013.

Debtors' Response

Debtor Objects to Trustee's Motion on the following grounds:

(1.) Debtors filed, served, and set for hearing an amended plan.

(2.) Debtors are current on their payment under their Chapter 13 plan.

(3.) Debtors delayed in filing an amended plan while they evaluated whether to continue in Chapter 13 or convert their case to Chapter 7.

A review of the docket shows that Debtors filed an amended plan and Motion to Confirm the amended plan on August 27, 2013. However, the court has reviewed the motion to confirm the amended plan and supporting evidence. Dckts. 93, 95, 96. The motion to confirm states with particularity the grounds upon which confirmation is asserted to be proper. Motion, Dckt. 93. However, the declaration fails to provide the court with any testimony from which the court can make the necessary findings of fact and conclusions of law. Declaration, Dckt. 95. The "testimony" provided by the Debtor in the Declaration consists of the following:

- A. He is one of the Debtors in the Chapter 13 case.
- B. The original plan failed to provide for the potential claims of the Internal Revenue Service and the California Franchise Tax Board.
- C. The amended plan provides (in an unstated way) for these two creditors.
- D. The Debtors have reviewed their income and expenses, and have made a minor adjustment to their food expense to afford the plan payment. A copy of the new budget is filed as an unidentified exhibit.
- E. The Debtors find and conclude that the amended plan is the Debtors' best efforts.
- F. The Debtors find and conclude that they will be able to make the payments under the Plan.
- G. The Debtors find and conclude that they have filed their petition in good faith. The Debtors state that they have filed the Plan to provide for the payment of their debts.
- H. The Debtors do not have any support obligations and have filed all applicable tax returns.

Declaration, Dckt. 95.

The only exhibit filed in support of the Motion is the budget referenced in the Declaration. It lists \$3,138.00 in income (which includes \$300 a month "rent" from son) and expenses of \$2,872.00 a month. The Net Monthly Income based on this budget is \$266.00. With respect to the income, no evidence is provided as to son's ability to pay rent of \$300, how long he has been paying \$300 a month rent, and whether he will be a tenant of the Debtors for the 60 months of the Plan. The Debtors did list "rent from son" on Schedule I filed in this case. Dckt. 1 at 38. There is no withholding or taxes paid from the Debtor's other income, which consists of Social Security payments.

The Debtor's personal findings of fact and conclusions of law that they can afford to make the payments, that they have extra income of \$300.00 a month shows that the plan is feasible, and that they are proceeding in good faith does not provide the court with testimony from which it can make the necessary findings of fact and conclusions of law. Possibly the Debtors have provided the Trustee with information concerning the son's "rent payment," his ability to pay, and the Debtors' reasonable expectation that

they will have that \$300.00 a month in income during the 60 months of the plan. But out of court information provided the Trustee is not evidence before the court.

It appears that the Plan, Motion, and supporting pleadings filed on August 27, 2013, have been filed to make it appear that there is a feasible plan in process. This "response" was made by the Debtors on the eve of the hearing on the present Motion to Dismiss.

The Motion to Dismiss was filed on August 7, 2013, and set for hearing on September 4, 2013, 28 days later. The Debtors' opposition was due 14 days prior to the September 4, 2013 hearing date - August 21, 2013. Local Bankruptcy Rule 9014-1(f)(1)(B). The Opposition was not filed until August 27, 2013. This adds to the appearance that the Debtors are not prosecuting this case in good faith, but merely throwing up a "Plan" to continue in the protection of the bankruptcy case without any good faith intention to prosecute the case.

The Debtors have not resolved Trustee's grounds and dismissal of the case is proper pursuant to 11 U.S.C. § 1307(c).

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

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

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

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

10.	13-23639 -C-13 DARREN BELCHER Peter Koulouris	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-22-13 [72]
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Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on June 1, 2013). The court docket reflects that on July 24, 2013, the Debtor paid \$70.00 of the fee due, upon which the Order to Show Cause was based, and the final installment payment on July 30, 2013.

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

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

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

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

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

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

11. [13-25540](#)-C-13 QUENTIN COLE
Pro Se

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
7-31-13 [[38](#)]

CASE DISMISSED 8/9/13

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay fees. The court docket reflects that on August 9, 2013, the Debtor's case was dismissed.

The Order to Show Cause is discharged as moot. No appearance required.

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

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

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

The Order to Show Cause having been presented to the court, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on November 13, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues Debtor's Motion to Confirm was heard and denied by the court at the hearing held on June 11, 2013. Debtor has not filed a subsequent plan or Motion to Confirm. This has resulted in unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c).

Debtor's Response

Debtor Objects to Trustee's Motion on the following ground(s):

(1.) Debtor did not file an amended plan because the plan relies on a Motion to Value Collateral that was heard on August 23, 2013. Debtor intends to file a new plan once the Motion to Value Collateral is resolved.

On August 28, 2013, the court heard Debtor's Motion to Value Collateral. The hearing on the Motion to Value Collateral was continued to September 25, 2013, to permit time for settlement negotiations.

This bankruptcy case was filed on December 14, 2012. The motion to value was filed on February 4, 2013. Dckt. 21. The Debtor asserts that the value of the property securing the claim of Olympia Mortgage & Investment Company, Inc. ("Olympia") has a value of \$330,000.00 and is subject to senior liens securing claims of (\$345,000.00). Therefore, it is asserted that the Olympia secured claim has a value of \$0.00. Olympia asserts in its opposition that the Property has a value "closer to \$395,000.00." Opposition, Dckt. 30. The Opposition was filed on February 19, 2013. No properly authenticated, admissible evidence in support of the "closer to \$395,000.00" value has been provided by Olympia.

The court continues the hearing on the Motion to Dismiss to November 13, 2013, to afford the Debtor the opportunity to resolve the motion to value one way or the other. The Creditor has offered no admissible evidence

as to value, instead choosing to attack the Debtor's testimony as to value and the condition of the property. Sufficient time has been provided to allow the creditor to conduct an appraisal and file that evidence with the court. It is time for the Debtor to either resolve the motion to value by stipulation or set an evidentiary hearing. Continuing the hearing on the Motion to Dismiss and the Debtor operating in the twilight between there being a proposed plan and not confirming a plan cannot continue. By the time of the continued hearing the Debtor will have been in this case for almost one year, more than a sufficient time to diligently prosecute the case.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on November 13, 2013.

13.	12-39946 -C-13	VICTORIA GOKEY	CONTINUED MOTION TO DISMISS
	TSB-3	John R. Harrison	CASE
			7-17-13 [58]

Local Rule 9014-1(f)(2) Motion - Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 17, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Trustee sought dismissal of the case on the basis that Debtor had no

pending Motion to Confirm and was causing unreasonable delay that was prejudicial to creditors. Debtor's Motion to Confirm was heard and denied by the court on May 21, 2013. Debtor filed an amended plan on June 24, 2013, but there has been no Motion to Conform this plan filed.

Debtor appeared at the hearing on Trustee's Motion and explained she was having difficulty communicating with her prior counsel

The court continued the hearing on Trustee's Motion from July 31, 2013 to September 4, 2013 to permit Debtor to engage replacement counsel.

On August 28, 2013, Debtor filed a supplemental response to Trustee's Motion stating that she had filed a third amended plan and Motion to Confirm the plan. A hearing on confirmation is set for October 8, 2013.

Having acquired new counsel and filed an amended plan with a date set for confirmation, cause no longer exists to dismiss Debtor's case.

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

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

The Motion to Dismiss 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.

14.	<u>13-26653</u> -C-13	BARBARA COCKERHAM Mohammad M. Mokarram	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 7-23-13 [<u>47</u>]
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Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$52.00 due on July 15, 2013). The court docket reflects that on August 14, 2013, the Debtor paid the final installment fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

15. [13-27957](#)-C-13 TRACIE RIGGS ORDER TO SHOW CAUSE - FAILURE
Thru #16 Pro Se TO PAY FEES
7-17-13 [[18](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay fees. The Trustee filed a Motion to Dismiss the case that is set for hearing on September 4, 2013. The court's final ruling is to grant Trustee's Motion to Dismiss.

The Order to Show Cause is discharged as moot. No appearance required.

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

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

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

The Order to Show Cause having been presented to the court, 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on August 6, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$100.00 delinquent in plan payments, which represents one month of the \$100.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

17. [13-27160](#)-C-13 REMEDIOS COPELAND MOTION TO DISMISS CASE
TSB-2 Ronald W. Holland 7-26-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 26, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

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

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

18. [12-21767](#)-C-13 JOHN/TAMMIE FLETCHER MOTION TO DISMISS CASE
TSB-1 Scott A. CoBen 8-7-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

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

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

The Trustee argues the plan will complete in 257 months, as opposed to 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d) and places Debtor in material default of plan terms. Debtor failed to value the second deed of trust held by CitiFinancial Services, Inc.

Furthermore, it appears Debtors cannot make payments required under 11 U.S.C. § 1325(a)(6) because Debtors are delinquent \$2,150.00 under the terms of the plan confirmed.

Debtors' Response

Debtors Object to Trustee's Motion to Dismiss on the following grounds:

(1.) Debtors filed a Motion to Value Collateral of CitiFinancial

Services, Inc. It is set for hearing on September 17, 2013.

(2.) Debtors will have their plan payment current prior to the hearing on the Motion to Dismiss.

The Debtors offer no evidence as to why the defaults occurred, why future defaults are not likely, and how the Debtors can have "extra" income to cure prior defaults when they are already providing all of their projected disposable income to fund the monthly payments. On Schedule I the Debtors state under penalty of perjury that their Average Monthly Income is \$6,577.00. Dckt. 1 at 25. The only deductions taken from the income is \$957.00 for payroll taxes and Social Security from Mr. Fletcher's wages. No deductions are provided on Schedule I for Mrs. Fletcher's \$2,500.00 a month business income. Schedule J lists \$4,427.00 in expenses for the Debtors. Id. at 26. No provision is made for the payment of any income or self employment taxes for the \$2,500.00 a month in self employed business income for Mrs. Fletcher. No provision is made for the payment of any real property taxes on Schedule J, but it is stated that they are not included in the monthly mortgage payment. The Monthly Net Income stated under penalty of perjury on Schedule J is \$2,150.00.

The Chapter 13 Plan requires that the current monthly mortgage payment of \$1,680.00 and an arrearage payment of \$255.00 is to be paid to Bank of America, N.A. on its Class 1 secured claim. No provision is made in the Plan for payment of property taxes.

The Debtors have not provided the court with a satisfactory explanation concerning the monetary default and their ability to continue under the Plan. The default has demonstrated that the Plan is based on faulty "financial logic" and doomed to failure. To the extent that the Debtors have "extra money" to cure defaults and pay the expenses not listed on Schedule J (such as property taxes, self-employment taxes, and income taxes from the self-employed income), then either the Debtors have undisclosed income or have falsely stated under penalty of perjury their expenses.

Cause exists to dismiss this Chapter 13 case. The motion is granted and the case is dismissed.

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

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

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

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

19. [12-38276](#)-C-13 JANE LEPISTO
TSB-1 Matthew R. Eason

CONTINUED MOTION TO DISMISS
CASE
2-22-13 [[60](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss, 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 was dismissed without prejudice, and the matter is removed from the calendar.**

20. [12-41876](#)-C-13 ALAN/BEVERLY HILL
TSB-1 Michael A. Scheibli

MOTION TO DISMISS CASE
8-7-13 [[101](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that Debtors are \$2,800.00 delinquent in plan payments, which represents one month of the \$2,800.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that Debtors did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on July 2, 2013. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtors' Response

Debtors' Object to Trustee's Motion to Dismiss on the following grounds:

(1.) Debtors have a pending Ex-Parte application to correct a clerical error in an order entered granting Debtors' Motion to Value Collateral of JP Morgan Chase Bank, N.A. Debtors were delayed by this matter, which includes a modification of the first deed of trust through the Homeowner Assistance Mortgage Program.

(2.) Secured Creditor U.S. Bank, N.A. filed a Motion for Relief from Stay to foreclose on property in alleged violation of dual tracking protections of the California Homeowner's Bill of Rights, (Cal. Civ. Code § 2923.6(c)-(d)). This has further delayed Debtors.

While Debtors' clerical concerns and allegations against U.S. Bank, N.A. may have caused delay in setting an amended plan for confirmation, it does not explain nor remedy Debtors' delinquency in plan payments. Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

21.	<u>13-29276</u> -C-13 LISA FREDERIKSEN <u>Thru #22</u> Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-16-13 [<u>18</u>]
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Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on August 12, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

22. [13-29276](#)-C-13 LISA FREDERIKSEN MOTION TO DISMISS CASE
TSB-1 Pro Se 8-20-13 [[20](#)]

Local Rule 9014-1(f)(2) Motion - No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 20, 2013. 14 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

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

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

23. [13-24780](#)-C-13 LORETTA SHACKLEFORD MOTION TO DISMISS CASE
TSB-1 David P. Ritzinger 8-7-13 [[39](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Dismiss is granted and the case is dismissed. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$123.00 delinquent in plan payments, which represents part of the \$465.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Motion to Confirm was heard and denied by the court on July 2, 2013. No subsequent amended plan or Motion to Confirm has been filed. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

24. [13-23483](#)-C-13 IRINA/DMITRIY BEREZENKO CONTINUED MOTION TO DISMISS
TSB-1 Oxana V. Kozlov CASE
5-9-13 [[43](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss, 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 was dismissed without prejudice, and the matter is removed from the calendar.**

25. [13-26390](#)-C-13 JOHN/CYNTHIA MOORE ORDER TO SHOW CAUSE - FAILURE
Thru #26 Rebecca E. Ihejirika TO PAY FEES
8-12-13 [[59](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$141.00 due on August 6, 2013). The court docket reflects that the Debtor made a \$70.00 payment on August 12, 2013. The docket does not reflect that the balance of the fees due was paid and the Debtors still have not entirely paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

26. [13-26390](#)-C-13 JOHN/CYNTHIA MOORE MOTION TO DISMISS CASE
TSB-1 Rebecca E. Ihejirika 8-20-13 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2013. 14 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,703.44 delinquent in plan payments, which represents one month of the \$1,703.44 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

27. [13-23191](#)-C-13 ESHIARI BALAWAG AND MOTION TO DISMISS CASE
TSB-2 ERLINDA MUTUC-BALAWAG 8-6-13 [[49](#)]
Marc A. Carpenter

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2013. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the hearing on the Motion to Dismiss to 10:00 a.m. on November 13, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,566.00 delinquent in plan payments, which represents one month of the \$1,566.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that Debtors' Motion to Confirm was denied by the court at the hearing held on June 18, 2013. Debtors have not filed nor set confirmation for an amended plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtors' Response

Debtors' Object to Trustee's Motion to Dismiss on the following grounds:

(1.) Debtors cured the delinquency and are current under the plan.

(2.) Debtor Mr. Balawag suffered a seizure in July 2013 which has hindered his ability to obtain employment and resulted in his driver's license being suspended pending further medical evaluation. Debtor Mrs. Balawag does work and is caring for her husband while he is in recovery. Debtors request an extension of time to assist their attorney in preparing and filing an amended plan.

The court recognizes that Debtors cured their plan delinquency and will grant a short extension of time to file an amended plan and Motion to Confirm the amended plan.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 10:00 a.m. on November 13, 2013.

28. [13-28894](#)-C-13 VASILIIY LAZARESKU MOTION TO DISMISS CASE
DPC-1 Pro Se 7-26-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on July 26, 2013. 28 days' notice is required.

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

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

The Trustee filed a Motion to Dismiss based on the Debtor's failure

September 4, 2013 at 10:00 a.m.

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to file Schedules G and H. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Docket reflects that Schedules G and H remain unfiled. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

29.	13-25495 -C-13	TROY FINLEY AND TIFFANY MCINTYRE-FINLEY Pro Se	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 8-5-13 [55]
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CASE DISMISSED 8/6/13

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay fees. The court docket reflects that on August 6, 2013, the Debtor's case was dismissed.

The Order to Show Cause is discharged as moot. No appearance required.

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

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

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

The Order to Show Cause having been presented to the court, 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.