

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

September 10, 2014 at 10:00 a.m.

1. [14-27701](#)-E-13 MICHEAL OTTEN  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-12-14 [[11](#)]

CASE DISMISSED 8/18/14

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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The case having previously been dismissed, the Order to Show Cause is  
discharged as moot.

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

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

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

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

September 10, 2014 at 10:00 a.m.

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

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

**Below is the court's tentative ruling.**

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

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

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

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

The Trustee seeks dismissal of the case on the basis that John and Kristina Bragg ("Debtors") are \$940.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). By the terms of the plan, this delinquency constitutes a default on the plan. 11 U.S.C. § 1307(c)(6). Before the hearing date, another payment of \$345.00 will be due. Debtors will need to provide \$1,285.00 to become current on plan payments.

**OPPOSITION**

Debtors have filed opposition to this Motion. Their attorney argues that Debtors will become current on their plan payments by the hearing date. No evidence is filed in opposition to the Motion and the Debtors fail or refuse to provide testimony under penalty of perjury (through a simple declaration) to explain (1) why the default occurred, (2) how they have extra money in a subsequent to cure the default by making multiple payments in one month, and (3) why such default is not likely to reoccur.

## **DISCUSSION**

Debtors have promised to bring their plan payments current, but there remains no proof that the payments are current at this time. The delinquency remains an unreasonable delay that prejudices 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.

3. [10-53003-E-13](#) SCOTT/ANA PANNETTA  
DPC-1 Kristy Hernandez

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

CONT. FROM 4-16-14, 7-9-14

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

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

**Below is the court's tentative ruling.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on February 27, 2014. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

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

**The Motion to Dismiss is denied without prejudice.**

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

#### **APRIL 16, 2014 HEARING**

As discussed below, the court continued the hearing to afford the various attorneys with connections to Scott and Ana Pannetta ("the Debtors") appear to address who is Debtors counsel in this case. The attorneys have also been ordered to appear and show cause on this matter at a hearing set for August 26, 2014.

Debtors have not filed any supplemental declarations or pleadings. The

Debtor is now \$2,736.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. However, given the circumstances of this case, the Debtors may suffer more harm if their case is dismissed at the present time. The motion is not granted and the case is not dismissed.

#### **JULY 9, 2014 CONTINUANCE**

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

Debtors did not file any supplemental declarations or pleadings at the time of the July 9, 2014 hearing. The Debtor is now \$2,391.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

At the July 9, 2014 Hearing, the continuance required that the attorneys listed below to appear and confirm (1) who is the attorney for Debtors, and (2) how it has come about that the attorney of record has disappeared and a non-attorney of records appears in the case. Civil Minutes, Dckt. 93.

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

#### **OPPOSITION**

Debtors filed opposition to this Motion. Debtors state that they are working on a Third Modified Plan and accompanying Motion to Confirm that should be filed by the hearing date.

## DISCUSSION

The court has reviewed the docket for this case. It does not reflect that a modified plan has been filed at this time. Despite the Debtors' promises that a modified plan will be filed before the hearing date, there is no proof that the delinquency defect on which the Trustee has based his motion to dismiss. Though this is grounds for dismissal, dismissing this case would subject the Debtors to even more harm and distress caused by the attorneys involved in the case. Dismissal would be, in light of the court's powers to govern the conduct of parties and attorneys, unnecessarily cruel at this time.

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

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

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

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

4. 14-26004-E-7 RICKY MEGASON  
Pro se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-10-14 [20]**

**CASE CONVERTED to CH 7 on 7/17/14**

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.

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The Order to Show Cause was served by the Clerk of the Court on Ricky Allen Megason, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 10, 2014. The court computes that 62 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 7, 2014).

<p><b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b></p>
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The court's docket reflects that the default has been cured.

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

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

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

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

5. 14-20006-E-13 RYAN/MEGAN ROSTRON MOTION TO DISMISS CASE  
DPC-1 Scott J. Sagaria 8-18-14 [46]

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

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

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

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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 18, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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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 June 24, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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



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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 12, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee's Motion notes that in a reply filed June 24, 2014, the Debtor passed away on or about June 11, 2014. Dckt. 109. No Statement Noting a Party's Death has been filed nor have any actions been taken to file a suggestion of death and motion to substitute parties, in accordance with Federal Rules of Bankruptcy Procedure 1016, 7025, and 9014. Additionally, the Trustee asserts that the Debtor's schedules indicate a life insurance expense, but no life insurance policies are listed among Debtor's assets. Without the necessary documents to establish death, substitute parties to complete the plan, and the existence of a life insurance policy, the case will be dismissed.

The remaining \$10.00 must be paid to complete the Debtor's plan and avoid dismissal. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**OPPOSITION**

Debtor has filed opposition to this Motion. Debtor's attorney argues that Debtor sent the insurance policy documents requested to the Trustee. Debtor's attorney also argues that she has paid the plan in full. However, no

evidence is filed in opposition, with Debtor failing or refusing to provide any testimony under penalty of perjury.

#### **DISCUSSION**

The court has reviewed the Docket for this bankruptcy case. It does not reflect that insurance documents were received on or around the date mentioned in Debtor's opposition, nor does it show that the plan has been paid in full. This is an unreasonably delay that prejudices 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.

7. 13-34907-E-13 VICTORIA VALENTE  
DPC-1 Stephen Johnson

MOTION TO DISMISS CASE  
8-8-14 [67]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,934.00 delinquent in plan payments, which represents multiple months of the \$3,973.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtor has filed opposition to this Motion. Counsel for Debtor has attempted to contact Debtor several times without success. Counsel for Debtor requests a 30-day continuance to continue efforts to contact Debtor and address the delinquent payments.

#### **DISCUSSION**

The Debtor has not shown that they have become current on her plan payments. Without evidence showing that Debtor has become current on their plan payments, the court must dismiss the case. Additionally, Debtor has not shown sufficient cause for the court to exercise its discretion to continue the hearing for 30 days.

Cause exists to dismiss this case. The motion is granted and the case is dismissed. The request for a continuance is denied.

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.

8. 09-36410-E-13 **MARC/SHARON VERLE**  
**DPC-1 Gary Ray Fraley**

**MOTION TO DISMISS CASE**  
**8-13-14 [74]**

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

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

**Below is the court's tentative ruling.**

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

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

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

<b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b>
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The Trustee seeks dismissal of the case on the basis that Marc and Sharon Verle ("Debtors") are in default of the terms of their plan. The Trustee calculates that the Plan will be completed in 73 months, which exceeds the 60 month maximum plan duration. 11 U.S.C. § 1332(d).

## **OPPOSITION**

Debtors have filed opposition to this Motion. Debtors, counsel argues that Debtors will both file a modified plan and come current on their plan payments by the hearing date.

## **DISCUSSION**

The court has reviewed the docket for this case, which does not reflect that Debtors have filed a modified plan at this time. Without proof that a modified plan has been filed, the defect upon which the Trustee based his motion has not been resolved as the current plan exceeds the maximum 60-month duration. 11 U.S.C. § 1332(d).

A review of the Docket discloses that an amended Plan, Motion to Confirm, and declaration in support of confirmation were filed on September 5, 2014. Dckts. 82, 80, and 83, respectively. The Motion appears to state with particularity the grounds upon which the Motion is based. Fed. R. Bankr. P. 9013.

However, the Declaration (Dckt. 83) does not appear to provide testimony and evidence in support of confirmation. At best, it states that the plan needs to be modified because Citi Financial has filed a claim for the full amount of the automobile which was surrendered, not crediting any value of the proceeds of the vehicle. No other testimony is provided. This is not sufficient evidence to support the court making the necessary findings of fact and conclusions of law required under 11 U.S.C. §§ 1329, 1325(a), and 1322.

Rather than an active prosecution of this case, the plan and motion appear to have been filed just to delay the prosecution of this Motion to Dismiss. Also, Debtors make no effort to properly address the Citi Financial Claim, apparently willing to abdicate determination of the proper unsecured deficiency, quite possibly because its not worth their time, as proper payment would only mean that other creditors would be properly paid, with no extra money in the Debtors' pocket. (Debtor's electing to pay extra money, apparently not owed, to Citi Financial and take it from other creditors.)

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

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

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

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

and good cause appearing,

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

9. 14-22510-E-13 **ALFRED/MONICA SALAZAR** **MOTION TO DISMISS CASE**  
**DPC-1** **Aaron Koenig** **7-25-14 [72]**

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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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 25, 2014. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,750.00 delinquent in plan payments, which represents multiple months of the \$2,250.00 plan payment.

The Trustee's Motion also 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 June 24, 2014.

#### **OPPOSITION**

Debtors have not filed an opposition to this motion.

#### **DISCUSSION**

Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Debtors continue to be

delinquent.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

10. [14-22811](#)-E-13 ADELAIDA VASQUEZ  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-23-14 [[40](#)]

CASE DISMISSED 7/14/14

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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<p>The case having previously been dismissed, the Order to Show Cause is discharged as moot.</p>
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The court shall issue a minute order substantially in the following form holding that:

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

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

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

11. 14-26411-E-13 WINONA EDMONSON  
DPC-1 Joseph M. Canning

MOTION TO DISMISS CASE  
8-15-14 [33]

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

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

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

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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 15, 2014. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,864.00 delinquent in plan payments with an additional \$1,864.00 due August 25, 2014, this represents multiple months of the \$1,864.00 plan payment. Debtor has paid \$0.00 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on August 11, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This



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

#### **OPPOSITION**

Debtor has indicated that they will cure the plan payment delinquency and has filed a Motion to Confirm First Amended Chapter 13 Plan on August 21, 2014. No evidence is filed in opposition, merely Debtor's attorney's arguments in the opposition.

#### **DISCUSSION**

Debtor has filed a Motion to Confirm. However, as of September 4, 2014, there is no evidence that payments have been made to the plan. 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.

12. 13-22012-E-13    **KENNETH/KRISTINE THOMPSON**    **MOTION TO DISMISS CASE**  
**DPC-1**                      **Peter Macaluso**                      **8-13-14 [61]**

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

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

**Below is the court's tentative ruling.**

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

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

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
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The Trustee's motion states that Kenneth and Kristine Thompson ("Debtors") did not include a priority claim of the Employment Development Department ("EDD") in their Chapter 13 plan. The Debtors received a Notice of Filed Claims, which includes this as a priority claim. Failing to include this claim as a priority claim constitutes a default on the plan. Debtor's Plan §2.13, Dckt. 45. Such a default on the plan is grounds to dismiss the case. 11 U.S.C. § 1307(c)(6).

#### **OPPOSITION**

Debtors have filed opposition to this Motion. Debtors state that they will file a modified plan and become current under the terms of the plan before the hearing date.

#### **DISCUSSION**

A review of the docket for this case does not reflect that Debtors have filed a modified plan that properly includes the EDD. Without evidence showing that the Debtors have filed a modified plan, the default on the plan's terms underlying the Trustee's Motion has not been cured.

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

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

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

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

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

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

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-30-14 [[25](#)]**

**CASE DISMISSED 7/14/14**

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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<p><b>The case having previously been dismissed, the Order to Show Cause is discharged as moot.</b></p>
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The court shall issue a minute order substantially in the following form holding that:

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The hearing on the Motion to Dismiss the Case is continued to October 21, 2014 at 3:00 p.m. to be heard in conjunction with Debtor's Motion to Confirm Debtor's Amended Plan (Dckt. 118).**

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 most recent prior plan on June 24, 2014.

**OPPOSITION**

Debtor has filed opposition to the Trustee's Motion to Dismiss, stating that a new plan was filed on August 22, 2014. On August 22, 2014, Debtor filed a Motion to Confirm Debtor's Amended Plan. Dckt. 118. The motion is set for hearing on October 21, 2014.

**DISCUSSION**

A review of the docket shows that Debtor has filed a motion to confirm a plan which is set for hearing on October 24, 2014 at 3:00 p.m. Dckt. 118. Because of the interrelatedness of the pending Motion to Confirm Debtor's Amended Plan and Trustee's Motion to Dismiss, the court continues the hearing on Trustee's Motion to Dismiss to be heard in conjunction with Debtor's Motion

to Confirm Debtor's 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 the Case is continued to October 21, 2014 at 3:00 p.m. to be heard in conjunction with Debtor's Motion to Confirm Debtor's Amended Plan (Dckt. 118).

15. [14-27422-E-13](#) **LONNIE/SHARON SHURTLEFF** **ORDER TO SHOW CAUSE - FAILURE**  
**C. Anthony Hughes** **TO PAY FEES**  
**8-25-14** [\[26\]](#)

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**

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The Order to Show Cause was served by the Clerk of the Court on Lonnie and Sharon Shurtleff ("Debtor"), Debtor's Attorney, and Trustee on August 27, 2014. The court computes that 13 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 20, 2014).

<b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b>
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The court's docket reflects that the default has been cured on August 29, 2014. Dckt.

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

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

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

**IT IS ORDERED** that the Order to Show Cause is

discharged, no sanctions ordered, and the case shall proceed in this court.

16. 13-34624-E-13 DEBRA RANDELL  
DPC-1 Mark Briden

MOTION TO DISMISS CASE  
8-13-14 [[101](#)]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

17. 10-32525-E-13 KATHERINE MENDOZA  
DPC-1 Richard Chan

MOTION TO DISMISS CASE  
8-13-14 [[105](#)]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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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 13, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$7,468.00 delinquent in plan payments, which represents multiple months of the \$1,867.00 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 filed an opposition to this Motion.

#### DISCUSSION

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. 13-36132-E-13    **THAN PHUNG**  
NLE-1                      **Aaron Koenig**

**CONTINUED MOTION TO CONVERT  
CASE FROM CHAPTER 13 TO CHAPTER  
7 AND/OR MOTION TO DISMISS CASE  
4-22-14 [40]**

**CONT. FROM 5-28-14**

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on April 22, 2014. 28 days notice is required.

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

<p><b>The court's decision is to grant the Motion to Convert and convert the case to a Chapter 7.</b></p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$91.21 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The 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 March 4, 2014. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The Trustee also states that the Trustee's prior objection raised the issue that the Debtor's business property may be worth \$75,000.00 more than scheduled, and \$60,600 of business assets may not have been scheduled. This



objection was sustained on March 4, 2014.

#### **DEBTOR'S RESPONSE - MAY 13, 2014**

Debtor filed a response, stating that he filed an ex-parte motion to dismiss the case because he cannot file or set for confirmation a feasible Chapter 13 plan or comply with the Trustee's or the Court's requirements. Debtor states he did not engage in bad faith or abuse the bankruptcy process. Debtor seeks to have this case dismissed.

#### **MAY 28, 2014 - HEARING - CONTINUED**

Before ruling on the motion, the court continued the hearing to allow the Debtor, his Litigation Attorneys, the Chapter 13 Trustee, Creditors, the U.S. Trustee, and other parties in interest address the matter.

The hearing on the Motion to Dismiss was continued to 10:00 a.m. on September 10, 2014. The Chapter 13 Trustee was instructed to file and serve any supplemental or amended pleadings on or before August 1, 2014; The U.S. Trustee was instructed to file, if any, pleadings relating to the Chapter 13 Trustee's Motion, and recommendation of whether the case should be dismissed, converted to Chapter 7, or converted to Chapter 11, or the Motion should be denied, on or before August 8, 2014; and the Debtor was instructed to file and serve supplemental pleadings or responsive pleadings on or before August 22, 2014.

The court extended the time period for consideration of this Motion and the Parties in Interest to file pleadings so the court may make the correct, informed decision on whether the case should be dismissed, converted to Chapter 7, or converted to Chapter 11 and a trustee appointed, to allow the Debtor to meet with his counsel and determine whether it is in his best interests to prosecute this case and a bankruptcy plan.

#### **DEBTOR'S OPPOSITION - AUGUST 22, 2014**

Debtor filed opposition to this Motion, explaining Debtor's difficulty in obtaining a commercial property appraisal and a business valuation appraisal before the court's August 22, 2014 deadline. Civil Minutes, Dckt. 48. Debtor states that the appraisals will be filed in support when they are available. A review of the docket shows that the appraisals were filed on August 28, 2014. Dckt. 57.

#### **TRUSTEE'S RESPONSE - AUGUST 25, 2014**

The Trustee filed a response to Debtor's opposition. The Trustee states that the Debtor has failed to make six (6) of the eight (8) plan payments that have come due since filing. This increases Debtor's delinquency under the plan to \$606.56. The Trustee requests that the case be converted to a Chapter 7.

#### **DISCUSSION**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to

act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

At the hearing on the Trustee's Objection to Confirmation, the court noted,

At the hearing the Debtor responded that he could not "undo what was previously said" and therefore would be unable to confirm a plan. While the court does not find the Debtor's responses sufficient, and in some situations credible, it may be possible for this Debtor to propose and confirm a good faith plan. This will require the presentation of credible, plausible evidence, more than "what I say now under penalty of perjury is true, but what I said before under penalty of perjury is not true."

As discussed below, the Debtor and his counsel in an adversary proceeding did not conduct themselves in a manner consistent with federal court proceedings. This appears to have carried over to this case and the plan which is now before the court. This does not preclude the Debtor from prosecuting the case and confirming a plan, but demonstrates that the Debtor and his counsel need to reconvene and reassess how they will prosecute this case.

Minutes, Dckt. 33. The court further noted that Debtor has a pending adversary proceeding, set for hearing July 7<sup>th</sup> and 8<sup>th</sup> in this department. In order for this court to maintain jurisdiction and continue the adversary proceeding, the court will convert this case to one under Chapter 7.

In responding to this Motion, the Debtor does not provide any evidence. Rather, he merely relies upon arguments advanced by his Bankruptcy Attorney as to the Debtor having filed and prosecuting this case in good faith. Response, Dckt. 46. While stating that he "cannot" file or set for confirmation a feasible chapter 13 plan or comply with the trustees [sic] and courts [sic] requirements, he offers no testimony as to what onerous requirements for a Chapter 13 debtor are beyond his ability to perform or why now, after having filed several bankruptcy cases the Debtor is not able to fund a Chapter 13 Plan.

The arguments of Debtor do not appear to be supported by his conduct in this and the prior bankruptcy case. Debtor commenced his first bankruptcy case on July 19, 2011. Bankr. E.D. Cal. 11-37725 ("First Case"). (For all his bankruptcy cases the Debtor has been represented by knowledgeable, experienced bankruptcy attorneys.) It took Debtor almost a year to confirm a Chapter 13 Plan, with the order confirming the Third Amended Chapter 13 Plan being filed by the court on March 13, 2012.

The Third Amended Plan required the Debtor to make payments of only \$336.00 a month for a period of sixty months. Third Amended Plan, 11-37725 Dckt. 47. This was modified to monthly plan payments of even less, requiring

only \$192.00 a month for the final 43 months of the Plan. *Id.*, Second Modified Plan and Order Confirming Second Modified Plan, Dckts. 107, 119. The Debtor testified under penalty of perjury that he could make the plan payments, he reconfirmed the income and expense information on Schedules I and J, and that he was proceeding in good faith. Declaration, *Id.*, Dckt. 50. He also testified under penalty of perjury, "I sincerely wish to complete this case and feel I can do so if my Chapter 13 Plan is confirmed according to the proposed plan terms." *Id.*

In obtaining confirmation of the Second Modified Plan, the Debtor testified under penalty of perjury that he has \$29,216.04 in monthly income and (\$29,216.04) in monthly expenses, yielding the \$192.00 monthly plan payment. *Id.*, Declaration, Dckt. 109. He also provided, under penalty of perjury, current income and expense statements. *Id.*, Exhibit A, Dckt. 110. The court believe the Debtor's testimony that from the \$29,216.04 a month in income, the Debtor could produce the nominal \$192.00 monthly payment to fund the Second Modified Chapter 13 Plan.

The Chapter 13 filing by the Debtor resulted in the filing of a nondischargeability complaint by Xu Ling Zhang. 11-2684. The Complaint sought damages in excess of \$100,000.00 and a determination that such damages were nondischargeable pursuant to 11 U.S.C. § 523(a)(6) being willful and malicious injuries having been cause by the Debtor. The Complaint was filed on October 24, 2011, and an answer (in *pro se*) was filed by the Debtor on November 23, 2011. On December 27, 2011, knowledgeable, experienced bankruptcy counsel substituted in as the counsel for the Debtor in the Adversary Proceeding.

On March 20, 2012, the knowledgeable and experienced bankruptcy counsel for the Debtor file a Motion to withdraw as counsel for the Debtor in the Adversary Proceeding. *Id.*, Dckt. 17. Counsel sought to withdraw because the parties and witnesses spoke Cantonese Chinese and counsel could not provide the necessary interpreter services. Counsel withdrew the first motion and filed a second motion on April 4, 2012, seeking to withdraw for the same reasons. The court granted the Motion and the Debtor proceeded in *pro se*. *Id.*, Order, Dckt. 39.

The Adversary Proceeding progressed, with the court making a determination pursuant to Federal Rule of Civil Procedure 56(g) and Federal Rule of Bankruptcy Procedure 7056 that specific facts were not in material dispute. *Id.*, January 29, 2013 filed Order Dckt. 51. The court denied Plaintiffs request for entry of summary judgment against the Debtor. *Id.*, March 6, 2013 filed Order, Dckt. 83.

On March 11, 2013, new Adversary Proceeding counsel ("Litigation Attorneys") for Debtor filed a substitution of attorneys and a motion for relief from the order determining facts not to be in material dispute. *Id.*, Dckts. 100, 93. The court denied the Motion. *Id.*, Order filed April 2, 2013, Dckt. 108. The court addressed in detail the grounds stated in the motion, the basis for the prior determinations and why the Debtor failed to state proper grounds (or that there was any material dispute as to the limited facts determined by the court), and concluded,

" The Debtor wants to pursue fruitful settlement negotiations. Such has been the Debtors ability for the last

18 months, and since February 8, 2013 with his current counsel. If the case is going to settle, then it will settle. It is hardly a surprise to anyone in the legal profession or business community that most matters settle on the eve of trial. Delaying for six months offers little to the settlement process. Current counsel for the Debtor now has two months of representation of the Debtor, which should be sufficient to engage in meaningful settlement negotiations.

The court has not granted the Plaintiff summary judgment in this Adversary Proceedings and has limited the relief only to specific facts as determined pursuant to Federal Rule of Civil Procedure 56(g). The Debtors ability to present a defense exists. The court also notes that there is no contention that the matters deemed admitted could actually be denied by the Debtor in good faith. Rather, it appears that the Debtor and counsel would just like to have those items aside to further tip the last minute negotiations in their favor.

It also needs to be remembered that the transaction underlying the Adversary Proceeding is not a simple consumer transaction. Rather, it is an alleged commercial international transaction. This Debtor is not a simple consumer debtor. On his Statement of Current Monthly Income the Debtor lists gross business income of \$28,916.04 a month. Dckt. 1. On the Statement of Financial Affairs the Debtor lists having gross income of \$487,972 in 2009 and \$415,796 in 2010. For the first half of 2011, the Debtor listed having \$173,496 in gross income (the bankruptcy case being filed on July 19, 2011). Statement of Financial Affairs Question 1, Dckt. 1.

The court has not granted Plaintiff summary judgment in this Adversary Proceeding. Though summary adjudication has been made on some items, they are not determinative of the issues for nondischargeability of debt. Many of the determinations are general in nature, providing general intention, but not specific impact. The Debtor can still defend himself, even at this late date, and can negotiate in good faith. Plaintiff, while having obtained summary adjudication, is aware that it still has the burden of proof in prevailing on the issues of nondischargeability, and not merely providing liability on a debt."

*Id.*, Civil Minutes, Dckt. 105.

The court continued the pre-trial conference from March 27, 2013 (*Id.*, Scheduling Order, Dckt. 42) to July 31, 2013. *Id.*, Order, Dckt. 107. The pre-trial conference was again continued pursuant to a stipulation of the parties to allow them to engage in mediation. *Id.*, Stipulation, Dckt. 109; Order, Dckt. 113. The judge conducting the court supervised mediation issued his order that no settlement had been reached and the mediation concluded. *Id.*, September 24, 2013 filed order, Dckt. 117.

The pre-trial conference was again continued by the court to January 8, 2014. *Id.*, Order, Dckt. 122. This was to set the schedule for the filing of pre-trial conference statements. Following the pre-trial conference the court set a two-day trial in the Adversary Proceeding for July 7 and 8, 2014. *Id.*, Order, Dckt. 132.

On January 14, 2014, the Debtor's Litigation Attorneys filed a "Request for Judicial Notice" and a Memorandum re Jurisdiction. *Id.*, Dckts. 128, 129. The Memorandum argued that the Debtor's Chapter 13 case, 11-37725, had been dismissed, and therefore no proper grounds existed for this court to exercise federal court jurisdiction over the tort claim in the Complaint.

The Debtor and his Litigation Attorneys in the Adversary Proceeding were correct, the First Bankruptcy Case had been dismissed by order of the court filed on November 19, 2014. 11-37725, Dckt. 123. That order was entered pursuant to the Chapter 13 Trustee Notice of Default and Motion to Dismiss filed on October 11, 2013. *Id.*, Dckt. 120. The Notice stated a \$521.00 default in payments - an amount equal to less than three months of required minimal plan payments of \$192.00 a month.

The Notice of Default and Motion to Dismiss was served on the Debtor and Debtor's experienced bankruptcy counsel. No response was filed and no effort made by the Debtor to either cure the default or save his confirmed Chapter 13 Plan with the minimal \$192.00 a month plan payment. The court dismissed the First Bankruptcy Case without hearing or it having been noticed to creditors. *Id.*, Certificate of Service, Dckt. 121.

What the Debtor and his Litigation Attorneys failed to disclose to the court in contending that federal court jurisdiction did not exist for the Adversary Proceeding because the First Bankruptcy case was dismissed, was that the Debtor, with the assistance of knowledgeable and experienced bankruptcy, filed a second bankruptcy case (the current case before this court) on December 30, 2013. The current case was originally assigned to the Hon. Christopher M. Klein, bankruptcy judge in the Eastern District of California. Following the standard procedure in this District, on February 11, 2014, Judge Klein transferred the current case to Department E of the Court so that it would be heard by the same judge who was assigned the First Case. This District has a policy of assigning subsequently filed cases to the judge having the original case to avoid the appearance of judge shopping by parties.

While the Debtor's Litigation Attorneys may protest being ignorant of the fact that the second bankruptcy case was filed on the heels of the first being dismissed for minimal plan payment defaults, the Debtor cannot claim such ignorance. It is questionable how experienced Litigation Attorneys would be "left in the dark" about the Debtor refileing a case.

The conduct of Litigation Attorneys was suspect in that it "withdrew" the attempted dismissal of the Adversary Proceeding the day after this current case was reassigned to the judge who presided over the First Case.

After trial, the court granted Creditor judgment in the amount of \$100,000.00 against the Debtor in the Adversary Proceeding. The judgment was determined to be nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [Fraud], 11 U.S.C. § 523(a)(4) [Fraud or Defalcation While Acting in a Fiduciary

Capacity]. 11-2684, Dckt. 151, filed July 15, 2014.

Debtor also seeks, by ex-parte motion, to dismiss the current Chapter 13 case. Motion, Dckt. 44. The Motion states no grounds upon which the requested relief is based, and only quotes 11 U.S.C. § 1307(b). This fails to meet the minimal pleading requirements that a motion must state with particularity both the grounds and relief requested. Fed. R. Bank. P. 9013.

The Debtor has filed a declaration, again providing testimony under penalty of perjury, stating that he is having difficulty in prosecuting this case because,

- A. The Debtor cannot afford to obtain a valuation of his business;
- B. The Debtor cannot afford to obtain a valuation of his real property.

Dckt. 45. These valuation issues arose in connection with the Chapter 13 Trustee's objection to confirmation of the Chapter 13 Plan in this case. Notwithstanding an increasing real estate market, the Debtor has stated under penalty of perjury in Schedule A in this case that his real property has a value of only \$250,000.00, which he stated under penalty of perjury in the First Bankruptcy Case that it has a value of \$325,000.00. Objection to Confirmation, Dckt. 18. The Trustee notes that the claim secured by the real property has been decreased to (\$288,738.45) on Schedule D in the current case, which stated under penalty of perjury on Schedule D in the First Bankruptcy Case to be (\$326,268.18). The decrease in value, if accurate, would result in there being no net value in the estate, however if the original value is accurate (without taking into account any appreciation in the real estate market since 2011), there would be \$36,261.82 equity for the estate.

The Trustee's Objection also is based on the Debtor failing to provide a value for his business which generates monthly income of \$23,000 to \$41,000 in monthly gross income. Schedule I, Dckt. 1 at 26. In addition, the Chapter 13 Trustee identified an additional \$60,600.00 in business assets not listed on Schedule B which were discovered on the Case Business Questionnaire.

The declaration provides no testimony as to what efforts were made to engage a real estate agent or broker, or appraiser, to express an informed opinion as to the value of the real property. No testimony is provided as to the bids received from any business valuation companies. Rather, the Debtor merely states that whatever the cost is, it is more than the Debtor wants to see paid for accurate valuation information being provided in his bankruptcy case.

The Debtor also testifies in his declaration that if the court will dismiss his case, he will agree to not have the Adversary Proceeding dismissed. Presumably he is stating that he consents to a federal court litigating the issues in the Adversary Proceeding even if his bankruptcy case is dismissed. This is repeated in the Response to the Trustee's Motion to Dismiss. Dckt. 46.

In denying the Debtor's attempt to have the Adversary Proceeding dismissed because the First Bankruptcy Case was dismissed, the court in detail reviewed federal court jurisdiction and the Constitutional limits thereto. 11-



2684, Civil Minutes, Dckt. 145. In short, Article III of the United States Constitution requires that there be a case or controversy arising under (1) the United States Constitution; (2) laws of the United States; (3) Treaties, cases affecting effecting ambassadors, other public Ministers and Consuls; (4) cases of admiralty and maritime, and (5) controversies to which the United States is a party, between two or more States, between citizens of different States, between citizens of the same State claiming lands under grants of different states, and between a state, or citizens thereof, and foreign states, citizens, and subjects. U.S. Constitution, Art. III, Section 8 (grant of power to Congress to enact uniform bankruptcy laws); 11 U.S.C. §§ 1334, 157. Absent such grounds existing, persons do not have the right or power to "consent" or "agree" to have an issue that falls outside of the Constitutional requirements adjudicated by a federal court. The federal judicial system is not merely a "for hire" litigation service.

The Adversary Proceeding is one to determine whether a debt is nondischargeable in this bankruptcy case. Such is a core proceeding. 11 U.S.C. § 157(b)(1). Federal court jurisdiction exists to determine the Adversary Proceeding, including all federal law and state law issues pursuant thereto.

However, if the court were to accept the Debtor's offer to dismiss the bankruptcy case, then it is questionable what federal court jurisdiction would exist to adjudicate the Adversary Proceeding. The court does not accept Debtor's offer to dismiss the federal law matters and basis for federal court jurisdiction. The court cannot understand how Debtor's bankruptcy counsel, who must have conferred with Debtor's Litigation Attorneys, would have proposed to the purported "consent" to federal court jurisdiction. One could well envision if the court were led into dismissing the bankruptcy case Debtor's Litigation Attorneys coming to court demanding that the Adversary Proceeding be dismissed in light of the federal court jurisdictional basis being dismissed. Debtor's Litigation Attorneys could well argue that no matter how "well intentioned" the Debtor and Debtor's bankruptcy counsel was, they could not create federal court jurisdiction where it did not constitutionally exist. FN.1.

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FN.1. It may well be that this attempt to get the bankruptcy case dismissed is part of an innocent request of the Debtor, bankruptcy counsel and Litigation Attorneys which was made without any research or determination that good faith legal and factual grounds existed for the relief requested. Such conduct of just asking for "stuff" regardless of whether it is legally or factually sound rarely produces good results.

Or it may be that this is a repeat attempt to mislead the court into letting the Debtor avoid his minimal obligations as a bankruptcy debtor. Here there are substantial issues concerning the property of the estate, assets which were not scheduled, and possible significant value for the estate. The Debtor does not get to possibly misrepresent facts to the court and when caught, slip out the back door.

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**Chapter 13 Plan Filed September 4, 2014.**

Debtor filed a proposed Chapter 13 Plan on September 4, 2014 - eight months after this case was filed. The plan provides for making minimal

payments for 60 months - \$103.07 for months 10-60, and an aggregate of \$218 for the months of 1-9. Of this \$3,891.00 is to be paid Debtor's counsel, in addition to the \$2,109.00 which he was paid prior to this case. The Plan provides that no payments will be made to any creditors.

This "Chapter 13 Reorganization" is nothing more than a disguised five year stay of enforcement of the \$100,000.00 nondischargeable judgment granted to Creditor Xu Ling Zhang. Only Debtor's bankruptcy counsel will be paid for delaying the creditor and the Chapter 13 Trustee's administrative expenses for processing the minimal \$103.07 a month payment.

The court has also looked at Debtor's declaration in support of confirmation. Dckt. 61. Other than rote recitation of the statutory elements for confirmation, Debtor provides no substantive testimony. He does not testify how he intends to make the minimal \$103.07 payment. Debtor also makes the curious statement that he is "functionally illiterate." From his testimony in the Adversary Proceeding, Debtor is very literate and testified that he engaged in on-line auto auctions. Possibly the reference is that he contends he does not understand or has a limited ability to read, write, and speak in English. However, at trial he never explained how he participated in internet auto auctions in California. Further, merely because Debtor may not (at this late date contended) does not speak or read English he is not "illiterate." As preparing the current declaration, he merely uses a translator.

The Chapter 13 Plan and Motion filed are further shams by Debtor, with the assistance of his counsel to abuse the federal courts and bankruptcy process. It is a clear manifestation of Debtor's bad faith in the filing, prosecution, manufactured default to cause a dismissal of the prior bankruptcy case, attempted dismissal of the Adversary Proceeding after having filed the present case, and attempts to dismiss this case while the Adversary Proceeding was pending.

Grounds have been shown to convert this case to one under Chapter 7. Dismissal clearly is not in the best interests of the estate or creditors. It appears that the Debtor has, and continues, to manufacture defaults under the Chapter 13 Plan and failure to fulfill his minimum obligations to truthfully and accurately disclose his assets. Dismissal of this case, and quite possibly having the Debtor file a Round Three Bankruptcy Case is not in the interests of the estate or creditors.

Further, Debtor's conduct has made it clear that an independent fiduciary must be appointed to protect, advance, and recover the interests and properties of the Estate.

Cause exists to convert this case. The motion is granted and the case is converted to one under chapter 7.

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 Convert the Chapter 13 Case to Chapter 7



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 Convert is granted and the case is converted to a Chapter 7.

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

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 3, 2014. By the court's calculation, 68 days' notice was provided. 42 days' notice is required.

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

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

Gerald and Virginia Martinez ("Debtor") filed their Motion to Confirm Amended Chapter 13 Plan on July 3, 2014. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

**MOTION TO CONFIRM AMENDED CHAPTER 13 PLAN**

Debtor filed their Motion to Confirm Amended Chapter 13 Plan on July 3, 2014. The Debtor's amended plan proposes to pay no less than a 25% dividend to their unsecured creditors and an additional amount from the turnover of their state and federal tax refunds for the tax years 2015, 2016, 2017, and 2018 to the Chapter 13 Trustee when those funds are received each year also to be paid to the unsecured creditor.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an objection to Debtor's Motion to Confirm Amended Plan on the grounds that:

1. The Additional Provisions of the Plan state the following: "Debtors have committed to the turnover to the Trustee of the Debtors' state and federal tax refunds for the years of 2012, 2016, 2017, and 2018." The case was filed on March 18, 2014 and the tax refunds requested by the Trustee are for the tax years of 2014, 2015, 2016, and 2017.
2. The Debtors' Plan fails to provide for the secured claim of Asset Acceptance, LLC, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that the Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

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

Debtor filed a response to Trustee's objection on August 11, 2014 which states:

1. The tax years listed were a typographical error and should have said "2014, 2015, 2016, and 2017." Debtor hopes that it can be addressed in the Order.
2. With regard to the secured claim filed and not provided for in the Plan and the possible motivation "that the Debtor wants to conceal the proposed treatment of a creditor," Debtor notes that they would like to reassure the Trustee and the court that concealment is not something that will come from Debtor's attorney's office.
3. Debtor's attorney listed the debt to Asset Acceptance as unsecured on Schedule F because he understood the debt as a judgment for a defaulted credit card obligation and that it did not involve collateral. The creditor has elected to characterize the debt as secured because they recorded an Abstract of Judgment in Butte County and have a lien. The Debtor's Attorney is unsure whether that gives the creditor the right to call their claim secured.
4. Debtors have equity in their Butte County residence of approximately \$92,645.00 and have exempted \$100,000.00 under C.C.P § 704.730. This creditor's lien impairs the exemption and Debtor's attorney alleges that he will file a motion to avoid the lien.

#### **DISCUSSION**

The reasoning given by the Debtor in their response to Trustee's opposition sufficiently explains the tax years given under the Additional Provisions as a typographical error. Thus, Trustee's first objection is

overruled.

Upon review of the docket, the court granted Debtor's Motion to Avoid the Judicial Lien of Asset Acceptance, LLC. Thus, Trustee's second objection is moot.

The amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 3, 2014 is confirmed, pending correction of the Additional Provisions to correctly state the tax years for turnover of tax refunds to the Trustee are "2014, 2015, 2016, and 2017," which shall be stated in the order confirming the Plan. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. 10-25935-E-13 BRUCE/JERMAYNE POWELL  
DPC-1 Justin K. Kuney

MOTION TO DISMISS CASE  
8-13-14 [61]

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

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

**Below is the court's tentative ruling.**

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

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

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

The Trustee seeks dismissal of the case on the basis that Bruce and Jermayne Powell ("Debtors") are in default of the terms of their plan. 11 U.S.C. § 1307(c)(6). The Trustee calculates that the Plan will be completed in 73 months, which exceeds the 36 month duration proposed in Debtors' plan and. Debtors were provided a Notice of Filed Claims, which stated that a motion to modify their plan was required. Dckt. 33.

#### **OPPOSITION**

Debtors have filed opposition to this Motion. Debtors state that they will file a modified Chapter 13 plan that will extend the duration of the plan. Debtors also state that they will attempt to negotiate the IRS priority claim that caused the issue.

#### **DISCUSSION**

Though Debtors have promised to file a modified plan, a review of the docket does not reflect that such a modified plan has been filed at this time. In order to cure the default on the plan and avoid dismissal, the Debtors must

demonstrate that a plan has been filed. 11 U.S.C. § 1307(c)(6).

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

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

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

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

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

22. 14-27037-E-13    **WILLIAM JOHNS**  
DPC-2                      **Scott D. Hughes**

**MOTION TO DISMISS CASE**  
**8-13-14 [20]**

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

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

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

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

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

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

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

Additionally, the Trustee asserts that the Debtor did not disclose his two prior Chapter 13 bankruptcy cases in his petition. A debtor's misrepresentation of facts in his petition as well as that debtor's bankruptcy filing history are among the factors that are considered in determining whether cause exists to dismiss a case for a lack of good faith. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999). Lack of good faith can be found even when a debtor does not intend to defraud creditors, as "malfeasance is not a prerequisite to bad faith." *Id.* at 1225.

#### **OPPOSITION**

Debtor has not filed an opposition to this motion.

#### **DISCUSSION**

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

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

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

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

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

23. 14-26839-E-13 ELIZABETH MADEWELL  
DPC-2 Pauldeep Bains

MOTION TO DISMISS CASE  
8-13-14 [[21](#)]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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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 13, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

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

#### OPPOSITION

Debtor has not filed an opposition to this Motion.

#### DISCUSSION

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

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

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

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



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

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

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-24-14 [[33](#)]

CASE DISMISSED 7/14/14

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

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

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

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

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

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

25. 11-43242-E-13 MARIA PINERA  
DPC-1 Thomas O. Gillis

MOTION TO DISMISS CASE  
8-13-14 [[51](#)]

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

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

**Below is the court's tentative ruling.**

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

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

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

The Trustee seeks dismissal of the case on the basis that the Debtor is \$2,200.00 delinquent in plan payments, which represents multiple months of the \$615.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtor has filed opposition. Debtor states that she will bring her plan payments current by September 25, 2014. Debtor also requests a continuance until September 25, 2014.

Debtor offers no testimony (a simple declaration) or other evidence in opposition to the Motion. Her attorney merely makes arguments about possible "facts." Significantly, Debtor fails, or refuses, to provide any testimony as to (1) why the default occurred, (2) how Debtor can have extra money in September 2014 to make four monthly payments in one month, and (3) why such default is not likely to reoccur.

## **DISCUSSION**

In order to cure the delinquency underlying the Trustee's motion, the Debtor must show that the plan is current at least by the hearing date. Otherwise, the delinquency remains prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Additionally, the Debtor has not shown cause sufficient for this court to exercise its discretion to continue the hearing until September 25, 2014.

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

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

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

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

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

26. 11-43945-E-13 BENJAMIN/MARIA PADILLA  
DPC-1 Thomas O. Gillis

MOTION TO DISMISS CASE  
8-13-14 [[110](#)]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

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

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

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

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

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

27. 14-25546-E-13 MARY GONSALVES  
Pro Se

AMENDED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
7-3-14 [22]

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

-----

The Order to Show Cause was served by the Clerk of the Court on Mary Gonsalves, "Debtor," Trustee, and other parties in interest on July 3, 2014. The court computes that 69 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 26, 2014).

<p><b>The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.</b></p>
--

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

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

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

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

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

28. 14-25546-E-13 MARY GONSALVES  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-31-14 [[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, 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 Mary Gonsalves, "Debtor," Trustee, and other parties in interest on July 31, 2014. The court computes that 41 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 28, 2014).

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

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - 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 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that Mary Gonsalves ("Debtor") is \$200.00 delinquent in plan payments, which represents multiple months 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 proof of income for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). 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).

## **OPPOSITION**

Debtor has not filed an opposition to this motion.

## **DISCUSSION**

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

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

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

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

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



30. 14-25647-E-13 BARRY MCGWIRE  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-4-14 [24]

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

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The Order to Show Cause was served by the Clerk of the Court on Barry McGwire, "Debtor," Trustee, and other parties in interest on August 4, 2014. The court computes that 37 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 28, 2014).

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

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

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

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

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

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

31. 14-25647-E-13 BARRY MCGWIRE  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-3-14 [[22](#)]

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

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The Order to Show Cause was served by the Clerk of the Court on Barry McGwire, "Debtor," Trustee, and other parties in interest on July 3, 2014. The court computes that 69 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on June 30, 2014).

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

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - 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 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

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).

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

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 proof of income for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). 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).

#### **OPPOSITION**

Debtor has not filed an opposition.

#### **DISCUSSION**

Cause exists to dismiss this case. The debtor has failed to file a motion to confirm his Chapter 13 plan, did not appear at the Meeting of Creditors, and has not provided proof of income or his tax documents. The motion is granted and the case is dismissed.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 25, <year>. 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). 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).

<p><b>The court's decision is to granted the Motion to Dismiss and dismiss the case.</b></p>
--

The Trustee seeks dismissal of the case on the basis that Marc and Trishele Swasey ("Debtors") are \$2,870.00 delinquent in plan payments, which represents multiple months of the \$1,430.00 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 also argues that the Debtors did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtors' prior plan on June 10, 2014. A review of the docket shows that Debtors have not yet filed a new plan or a motion to confirm a plan. Debtors offer no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

**OPPOSITION**

Debtors filed opposition to the Trustee's Motion to Dismiss, stating that the delay in filing a new plan was due to a disputed claim for medical expenses of Debtor Mark Swasey's ex-wife. A hearing on this claim is set to be held on September 30, 2014. The Debtors' objection to dismissal did not address the delinquent payments.

The Debtor offers no evidence in opposition, but merely her counsel's argument. No testimony (a simple declaration) is provided as to (1) why the default occurred, (2) how the Debtor has extra money to make multiple plan payments in one month, and (3) why defaults are not likely to reoccur.

## **DISCUSSION**

Though the Debtors have filed an amended plan on July 30, 2014, cause still exists to dismiss this case because of the delinquent payments. 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:

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

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

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

34. 14-26551-E-13 MARIA QUINTANA CAMACHO  
DPC-1 C. Anthony Hughes

MOTION TO DISMISS CASE  
8-18-14 [14]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$100.00 delinquent in plan payments with an additional payment due August 25, 2014, which represents one month of the \$100.00 plan payment. Debtor has paid \$0.00 into the plan to date. 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.

35. 14-25658-E-13 DIANE HALSTEAD  
DPC-1 Pro Se

MOTION TO DISMISS CASE  
7-9-14 [15]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on July 9, 2014. By the court's calculation, 63 days' notice was provided. 28 days' notice is required.

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

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

The Trustee filed a Motion to Dismiss based on the Debtor's failure to file the following documents:

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



- Chapter 13 Plan

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

Debtor filed her own Motion to Dismiss her Chapter 13 case. Dckt. 20. Debtor does not oppose the dismissal of her case.

Cause exists to dismiss this case. Additionally, the debtor has voluntarily moved to dismiss this case. 11 U.S.C. § 1307(b). The motion is granted and the case is dismissed.

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

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

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

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

36.	<u>10-26059</u> -E-13	DANIEL/KIMBERLY MEIDINGER	CONTINUED MOTION TO DISMISS
	DPC-8	Peter Macaluso	CASE
			4-29-14 [ <a href="#">71</a> ]

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
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The Chapter 13 Trustee having filed a Withdrawal of the Motion to Dismiss the Bankruptcy Case, pursuant to Federal Rule of Civil Procedure 41(a) (1) (A) (i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

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

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

**Below is the court's tentative ruling.**

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

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

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

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

The Trustee seeks dismissal of the case on the basis that Marcelo and Hazel Lopez ("Debtors") are \$4,260.00 delinquent in plan payments, which represents one month of the \$4,260.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

**OPPOSITION**

Debtor has filed opposition to this Motion. Debtor states that they have made their plan payment for July and are in the process of making their August payment. However, the Debtors offer no evidence to support their statement that the payment has been made, the reason for the default, that the default is not likely to reoccur, and how the Debtors have extra money to make multiple plan payments in one month.

**DISCUSSION**

The Debtors state that they have become current on their plan payments, yet they offer nothing to support that statement. The Trustee has provided the

Declaration of Jennifer Hand, which states that the Debtors are one (1) month delinquent in their plan payments. The evidence at hand supports the Trustee's position that the Debtors are delinquent in their plan payments, which is grounds for dismissal. 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.

38. 14-20565-E-13 RYAN/BRENDA COBOS MOTION TO DISMISS CASE  
DPC-2 Aaron C. Koenig 8-8-14 [53]

**CASE DISMISSED AS TO RYAN COBOS ONLY 3/17/14**

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,301.54 delinquent in plan payments, which represents multiple months of the \$650.77 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

This case was dismissed as to debtor Ryan Cobos on March 17, 2014 by way of the order granting to dismiss. (Dckt. 22). This Motion will only apply Brenda Cobos the remaining Debtor.

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

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

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

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

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

39. [14-25265](#)-E-13 SHERYL WOLHART  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-23-14 [[34](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Sheryl Wolhart, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 23, 2014. The court computes that 49 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$63.00 due on July 18, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor:\$63.00.

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

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

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

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

40. 14-25265-E-13 SHERYL WOLHART  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-22-14 [[48](#)]

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

The Order to Show Cause was served by the Clerk of the Court on Sheryl Wolhart, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 23, 2014. The court computes that 49 day's notice has been provided.

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

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

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

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

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

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

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

**Final Ruling:** No appearance at the September 10, 2014, hearing is required.  
-----

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on August 13, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

1. Debtor failed to appear at the First Meeting held on July 3, 2014, and the Meeting has been continued to July 31, 2014 at 10:30 am. The Debtor failed to appear at the continued meeting of creditors on July 31, 2014, the meeting has been continued to September 25, 2014, at 10:30 am.
2. Debtor is \$200.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on August 25, 2014. The Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide 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, or a written statement that no such documentation exists. See 11 U.S.C. § 521(e) (2) (A); Fed. R. Bankr. P. 4002(b) (3). This is required seven days before the first date set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (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.

42. 10-35266-E-13 JOSE/PATRICIA YSERN  
DPC-1 Douglas B. Jacobs

MOTION TO DISMISS CASE  
8-13-14 [[174](#)]

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

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

**Below is the court's tentative ruling.**

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

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

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

<b>The court's decision is to deny the Motion to Dismiss.</b>
---

The Trustee states that Debtors have failed to comply with the terms of the modified plan confirmed on April 6, 2013. Specifically, Section 6.01 calls for the debtors to pay on or before January 25, 2014, any remaining



amount to complete the plan. Debtors made the \$1,000 monthly payment through December 2013, as called for. Debtors have continued to make the payments of \$1,000 per month.

#### **DEBTORS' RESPONSE**

Debtors respond by stating that the plan was confirmed on April 15, 2013, and the debtors have made all monthly payments to date. The plan calls for the sale of Debtors' property at 810 Pomona Avenue, Chico, California, to fully pay this 100% plan. An agreement to sell the property was signed by Debtors and an escrow opened at Mid Valley Title Company. A purchase agreement and joint escrow instructions for that sale.

The sale has been slowed by the need for approval from the Planning Commission, but, as can be seen in the declaration of Patricia Ysern filed, and the parties were expecting such approval shortly and the sale can close. The pay-off of this 100% plan is anticipated to be \$82,304.

The Debtors will receive in excess of \$2,000,000.00 from the sale and there will, therefore Debtors state that there will be sufficient funds to pay off the plan from the escrow. The appropriate motion to approve the sale, and pay off the plan, so the plan will be filed as soon as it becomes clear that the escrow will close.

The Debtors stating that they will attempt to conduct a sale of the real property located at 810 Pomona Avenue, Chico, California to fund their 100% plan, the Trustee's concerns are resolved and the Motion to Dismiss is denied.

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.

43. [14-24266](#)-E-13 MAYLENE RAMAGOZA  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
6-30-14 [[44](#)]

CASE DISMISSED 7/14/14

**Final Ruling:** No appearance at the September 10, 2014 hearing is required.  
-----

**The case having previously been dismissed, the Order is discharged as moot.**

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

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

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

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

44. [14-25069](#)-E-13 KENNETH/RENETTE JOHNSON  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-18-14 [[32](#)]

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Kenneth Johnson and Renette Johnson, "Debtors," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 18, 2014. The court computes that 53 day's notice has been provided.

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

**The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.**

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

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

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

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

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

45. [14-25069](#)-E-13 KENNETH/RENETTE JOHNSON  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-18-14 [[38](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, 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 Kenneth Johnson and Renette Johnson, "Debtors," Trustee, and other parties in interest on August 18, 2014. The court computes that 23 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on August 12, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. [The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 29, 2014. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

The Chapter 13 Trustee states that Debtor is in material default with respect to the term of a confirmed plan under 11 U.S.C. § 1307(c). To date, Debtor has paid a total of \$171,348.03, with the last payment received on June 26, 2014. The Trustee shows a total of \$184,160.00 is due, so the Debtor is delinquent \$12,811.97 in plan payments. Debtor's monthly payment is \$3,792.00. Prior to the hearing in this matter, another payment of \$3,792.00 will come due. As a result, Debtor will need to pay \$16,603.97 in order to bring this plan current by the date of the hearing.

Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on the Motion to Dismiss. The Debtor not showing that they are no longer in default under the current 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.

47. [14-23573-E-7](#)      **MICAELA VAN DINE**  
                                 **Richard L. Jare**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-11-14 [[42](#)]**

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Micaela Van Dine, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 11, 2014. The court computes that 61 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 7, 2014).

<p><b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b></p>
---

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

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

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

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

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

48. [14-23573-E-7](#) MICHAELA VAN DINE  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-11-14 [[48](#)]

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Micaela Van Dine, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on August 11, 2014. The court computes that 31 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on August 5, 2014).

**The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.**

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

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

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

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

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

49. 14-23573-E-7      MICAELA VAN DINE  
DPC-2                      Richard L. Jare

MOTION TO DISMISS CASE  
8-8-14 [[44](#)]

**Final Ruling:** No appearance at the September 9, 2014, hearing is required.  
-----

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

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

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

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

**IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice, and the bankruptcy case shall proceed in this court.



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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 4, 2014. By the court's calculation, days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$690.00 delinquent in plan payments, which represents multiple months of the \$345.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor is in material default with respect to a term of the confirmed plan, under 11 U.S.C. § 1307(c)(6). To date, the Debtor has paid a total of \$20,010.00, with the last payment received on February 21, 2014. The Trustee shows a total of \$20,700.00 is due, so Debtor is delinquent \$690.00 in plan payments. Debtor's monthly payment is \$345.00.

Prior to the hearing in this matter, another payment of \$345.00 would normally come due, but if the delinquent amount is paid, the Trustee shows that the payment complete the plan.

**DEBTOR'S RESPONSE**

Debtor responds by stating that the case only requires two payments before the case will complete for discharge.

The Response states that "Debtor had not heard from debtor since the motion was filed" (the court presumes that this means that the attorney had not heard from his client) until September 1, 2014, via email, and indicated that she can provide half of the delinquent amount of \$345 on the date of this hearing. The Response vaguely asserts that Debtor then can and will provide "the final payment of \$345 in "nine days paving the way to discharge." The Response states that Counsel has contacted the Trustee's office to discuss the arrangement.

Debtor provides no account statements or receipts, showing that Debtor has made the necessary payments in this case and is no longer delinquent under the confirmed 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.

51. [12-24074-E-13](#) CURITS/SHELLY GRAVANCE  
DPC-1 Chelsea A. Ryan

MOTION TO DISMISS CASE  
8-13-14 [[128](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. By the court's calculation, 59 days' notice was provided. 28 days' notice is required.

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

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

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

The Trustee's calculations show the Plan will be complete in 71 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Debtors are in material default in exceeding the 60 month maximum. Filed priority claims were \$5,938.27 greater than scheduled in the Plan which is paying 22% to unsecured creditors and unsecured claims were \$54,317.47 more than scheduled.

#### **DEBTORS' RESPONSE**

Debtors' counsel responds to the Trustee's Motion by stating that their office is preparing a Modified Chapter 13 Plan that addresses all of the present feasibility issues in Debtors' case. The response states that the

modified plan will be filed prior to the hearing date and time on the Motion to Dismiss. The Response explains that the Internal Revenue Service denied some of Debtors' deductions in prior tax years.

As a result, Debtors unexpectedly owe more tax debt than they had previously provided for in their plan. Debtors were made aware of the increased claim of the Internal Revenue Service, and had already begun increased payments in August, 2014, in a good faith effort to properly fund their Chapter 13 case. Dckt. No. 132.

No modified plan, motion to confirm, or supporting evidence have been filed by Debtors. It does not appear that the Debtors are prosecuting their case. Based on the foregoing, the Motion to Dismiss 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.

52. 14-25275-E-13 DEDRA RUSSELL  
*Pro Se*

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-22-14 [[38](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, 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 Dedra Russell, "Debtor," Trustee, and other parties in interest on August 22, 2014. The court computes that 19 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 (\$69.00 due on August 18, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$69.00.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$250.00 delinquent in plan payments, which represents multiple months of the \$125.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

*Failure to File Documents*

The Trustee filed a Motion to Dismiss based on the Debtor's failure to file her Proof of Social Security. Under 11 U.S.C. § 521(h)(2) and at the request of the United States Trustee and Chapter 13 Trustee Debtor must provide proof of identity.

*Failure to Provide Pay Stubs/Tax Returns*

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). Additionally, the Trustee states 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).

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

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

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

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

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

54. [14-24678-E-13](#) **LYDIA MANLANGIT**  
**Pro Se**

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-7-14 [24]**

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court on Lydia Manlangit, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 7, 2014. The court computes that 65 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on July 1, 2014).

<b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b>
--

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

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

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

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

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

55. 14-24678-E-13 **LYDIA MANLANGIT**  
**DPC-2 Pro Se**

**MOTION TO DISMISS CASE**  
**8-15-14 [33]**

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on August 15, 2014. 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--



*Delinquent*

The Trustee seeks dismissal of the case on the basis that the Debtor is \$10,226.00 delinquent in plan payments, which represents multiple months of the \$5,113.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

*Failed to Appear at 341 Meeting*

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).

*Failure to Provide Pay Stubs/Tax Returns*

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

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 15, 2014. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

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

<p><b>The court's decision is to grant the Motion to Dismiss as to Brian Baetge and dismiss the case.</b></p>
---

*Delinquency*

The Trustee seeks dismissal of the case on the basis that the Debtor is \$350.00 delinquent in plan payments with an additional payment due prior to the hearing, which represents multiple months of the \$350.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

*Death*

The Trustee notes that on April 30, 2014 a Statement Noting a Party's Death was filed, stating Brian that Baetge ("Debtor") had passed away. No action to file a motion to substitute parties was made pursuant to Fed. R. Bankr. P. 1016, 7025, and 9014. Additionally, Trustee has not received any information concerning life insurance proceeds, distribution of retirement benefits, or payment of debts through credit insurance and therefore cannot determine that administration is possible and in the best interest of the parties.

## DEBTORS' RESPONSE

Debtor states that she is now current and the final payments due have been completed. The only requirement left for the Debtor to complete is the Debt Management Certificate. The Response states that counsel will file a request with the Court to waive this requirement for Brian Baetge. Additionally, Debtor had no life insurance at the time of death and was no longer employed. Counsel has provided proof of no insurance in Exhibit A. (Dckt. 55). The documents attached consist of a denial letter from Unun Insurance dated April 24, 2014. Dckt. No. 55.

With respect to the recent passing of Joint Debtor Brian Baetge, while the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor. *Hawkins v. Eads*, 135 B.R. at 384. Pursuant to Federal Rule of Bankruptcy Procedure 1004.1, the Joint Debtor must request authorization to be substituting in for the deceased debtor and to perform the obligations and duties of the deceased party in addition to performing her own obligations and duties.

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384. Here, a Statement Noting Mr. Baetge's Death was filed on April 30, 2014, Dckt. No. 49, but no Motion to Substitute the Deceased Party, as to continue the prosecution of the Chapter 13 Case on Mr. Baetge's behalf, has been filed.

Additionally, the docket shows that no Motion to Substitute the Deceased Party or a Motion for Order Waiving Debtor's 11 U.S.C. § 1328 Certificate in Granting a Discharge to the Deceased Debtor has been filed. Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374 (2007). This court can exercise its powers under 11 U.S.C. § 105(a) to "[i]ssue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

The Debtors not having complied with the requirements to continue prosecution of the case for Joint Debtor Brian Baetge, cause exists to dismiss the case as to Debtor Brian Baetge. The Motion is granted as to Brian Baetge.

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 as to Joint Debtor Kelly Baetge, and granted as to Joint Debtor Brian Baetge.

57. [14-26780](#)-E-13 **MICHAEL FLEMONS**  
Pro Se

**ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-4-14 [24]**

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

-----

The Order to Show Cause was served by the Clerk of the Court on Dedra Russell, "Debtor," Trustee, and other parties in interest on August 4, 2014. The court computes that 37 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 (\$70.00 due on July 30, 2014).

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

The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$70.00.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se) and Office of the United States Trustee on August 19, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

1. Debtor failed to appear at the First Meeting of Creditors held on August 14, 2014. The Meeting has been continued to September 11, 2014, at 10:30 am. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor is \$1,567.35 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,567.35 is due on August 25, 2014. The Debtor has paid \$0.00 into the Plan to date.

3. Debtor has failed to notice all interested parties of the Chapter 13 Plan and set a confirmation hearing date. The plan was filed on July 28, 2014, after the Trustee issued the 341 notice on July 17, 2014.
4. Debtor has failed to provide the Trustee with proof of income for the 60 days preceding filing of her bankruptcy as required by 11 U.S.C. § 521(a)(1)(B)(iv).
5. Debtor did not provide 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).
6. Debtor also failed to list a prior bankruptcy case on the petition, Case No. 11-38194 filed on July 25, 2011.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

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

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).

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
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The Trustee seeks dismissal of the case on the basis that the Debtor is \$20,000.58 delinquent in plan payments. To date, Debtor has paid a total of \$276,601.50, with the last payment received on February 24, 2014. Trustee shows a total of \$296,602.08 is due; Debtor is delinquent \$20,000.58 in plan payments. Debtor's monthly payment is \$5,000.01.

Prior to the hearing on this matter, another payment of \$5,000.01 will come due. As a result, Debtor will need to pay \$25,000.09 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

**OPPOSITION TO MOTION TO DISMISS**

Debtors respond by stating that they are now in the 60th month of the Plan and has paid \$281,601.51 to the Trustee over the last 59 months. The last payment is due May 25, 2014. Dckt. No. 79.

Debtors experienced some unexpected financial difficulties in the last

few months, which included their heating unit breaking down and the costs to replace it. In addition, Debtors state that they have a senior in high school, and that there have expenses with their daughter's last year of school and applications for college. ¶ 6, Declaration of Fernando Gerverio and Alape Gerverio, Dckt. No. 80.

Additionally, Debtors state that they changed their attorney of record for this case, because Debtors' previous counsel law firm is no longer in business. Debtors retained new counsel, and express that they are aware of their delinquency and are working hard to remedy the problem. The Debtors have three payments left for a total of \$15,000 and request that the court to continue this hearing approximately (90) ninety days to allow the them to make the payment and complete this 2009 case.

### **Continuance**

The case was continued due to financial difficulties the Debtor was facing making them unable to complete payments on time. Additionally the Debtor changed attorneys due to their previous law firm closing. Due to these circumstances the court continued the case to this hearing date.

### **DEBTORS' RESPONSE**

Debtors respond by stating that they have paid in \$20,000.04 as of September 2, 2014, which is over the \$15,000.57 that is required amount to complete their Chapter 13. Dckt. No. 85.

Debtors have not, however, filed evidence (receipts, account statements, invoices, etc.) showing that the Debtors have made the purported payments and have cured their delinquency. Instead of presenting any evidence (even a simple declaration), Debtors merely have their attorney make arguments about "facts" which may, or may not, be true.

The motion is granted and the case is dismissed.

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

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

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

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



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

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

**Below is the court's tentative ruling.**

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

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

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).

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

1. Debtor failed to appear at the First Meeting of Creditors held on June 26, 2014, and the Continued Meeting held on July 24, 2014. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been again continued to September 18, 2014, at 10:30 a.m.
2. Debtor is \$852.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$426.00 is due on August 25, 2014. The case was filed on May 12, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the plan to date.
3. 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).

4. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

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

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,748.82 delinquent in plan payments. To date, Debtor has paid a total of \$20,985.84, with the last payment received on May 20, 2014. Trustee shows a total of \$22,734.66 is due. Debtor's monthly payment is \$582.94.

Prior to the hearing on this matter, another payment of \$582.94 will come due. As a result, Debtor will need to pay \$2,331.76 in order to bring this plan current by the date of the hearing. Debtor is in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

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.

62. [14-25986](#)-E-13 TRUDY KUTZ  
Stanley P. Berman

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-30-14 [[30](#)]

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

-----

The Order to Show Cause was served by the Clerk of the Court on Trudy Kurtz, "Debtor," Trustee, and other parties in interest on July 30, 2014. The court computes that 42 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 July 25, 2014).

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

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

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

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

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

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

63. 14-25986-E-13 TRUDY KUTZ  
DPC-1 Stanley P. Berman

MOTION TO DISMISS CASE  
8-8-14 [32]

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - 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 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

*Failure to Confirm*

The Debtor's amended plan was filed on June 17, 2014, and has not been served on all interested parties and no motion to confirm is pending. The petition in this case was filed on June 4, 2014. No plan was filed with this petition. The Trustee caused the court to issue the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines on June 18, 2014.

A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors unless the court determines it should be held sooner. 11 U.S.C. § 1324. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). The first meeting of creditors was held and concluded on July 17, 2014, so the ability to set a hearing on the Motion to Confirm within 45 days will have elapsed by the date of the hearing on this motion.

## RESPONSE BY DEBTOR

Debtor responds by stating that has a Motion To Approve First Amended Plan has been filed and set for hearing on September 30, 2014.

The Response claims that Debtor's attorney had failed to set the First Amended Plan for confirmation hearing as he thought "that a motion to confirm the first amended plan was not required as the only difference between the original plan and the first amended plan was that the attorney fees were changed from \$2500 to \$1500 and thought that difference would not affect the creditors." Debtor argues that no prejudice to any creditor has occurred as the plan is a 100% plan.

Debtor's attorney disregards the bankruptcy process and confirmation requirements in asserting that a hearing to propose confirmation of the Amended Chapter 13 Plan would not be necessary, due to (what Debtor's counsel believes to be slight, but in reality is a material) difference in Debtor's original and amended plans.

The confirmation hearing on the First Amended Plan, which includes revisions in the Debtor's attorney fees, will not be held until September 30, 2014, more than 45 days after the date of the meeting of creditors under section 341 (a) and in violation of 11 U.S.C. § 1324. Additionally, the docket reflects that Debtor has failed to file a financial management course certificate and has not paid fees that came due on July 25, 2014 (the subject of the Order to Show Cause for Failure to Pay Fees issued on July 30, 2014). Debtor does not seem to be diligently prosecuting her Chapter 13 case.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

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

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

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

The Chapter 13 Trustee seeks dismissal of the case on the basis that the Debtor is in material default of the Plan. Debtor failed to provide for the priority claim of the Internal Revenue Service, Proof of Claim No. 1 as amended, in the amount of \$47,119.39 of which \$18,330.27 is claimed as priority. Section 2.13 of the Plan makes the failure a breach of the plan.

The Debtor was provided a Notice of Filed Claims on September 10, 2013, Dckt. No. 36, which listed this claim on Page 5 as priority and not provided for in the plan and indicated that a motion to modify was required, Page 2, Item f.

Additionally, it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor is delinquent \$2,510.00 under the terms of the plan confirmed April 18, 2013, and the next scheduled payment of \$1,255.00 is due on August 25, 2014. Payments totaling \$22,590.00 have become due. A total of \$20,080.00 has been paid to the Trustee with the last payment posted on July 15, 2014.

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

is dismissed.

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

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

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

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

65. 14-24288-E-13 **DARREN/MICHELLE MURPHY** **AMENDED ORDER TO SHOW CAUSE -**  
**Mikalah R. Liviakis** **FAILURE TO PAY FEES**  
**7-8-14 [25]**

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**

-----  
The Order to Show Cause was served by the Clerk of the Court on Darren Murphy and Michelle Murphy, "Debtors," Trustee, and other such other parties in interest as stated on the Certificate of Service on July 8, 2014. The court computes that 64 day's notice has been provided.

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

**The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.**

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

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

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

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

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



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

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

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

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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 18, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
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*Delinquent*

Debtors are \$5,718.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,859.00 is due on August 25, 2014. The case was filed on April 26, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. The Debtor has paid \$2,859.00 into the plan to date.

Failure to make plan payments is unreasonable delay which is

prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

*Prior Plan Denied, No New Plan*

The Trustee's Objection to Confirmation, DPC-1, was heard and sustained by this court at the hearing held on July 1, 2014, Civil Minutes, Dckt. No. 28.

A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

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

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

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

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

67. [14-24589-E-13](#) LETICIA ROJAS  
Aaron C. Koenig

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-4-14 [[32](#)]

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
-----

The Order to Show Cause was served by the Clerk of the Court Leticia Rojas, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on August 4, 2014. The court computes that 37 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 8, 2014).

**The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.**

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

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

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

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

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

68. [14-27090](#)-E-13 JOHN MCCALL  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-13-14 [[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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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The Order to Show Cause was served by the Clerk of the Court on John McCall, "Debtor," Trustee, and other parties in interest on August 13, 2014. The court computes that 28 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 8, 2014).

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

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Office of the United States Trustee on July 25, 2014. 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). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

*Delinquent*

The Trustee seeks dismissal of the case on the basis that the Debtor is \$150.00 delinquent in plan payments, which represents multiple months of the \$75.00 plan payment. The Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

*Verification of Income*

Debtor has failed to provide the Trustee with his/her Employer Payment Advices received 60 days prior to the filing under 11 U.S.C. § 521(a)(1)(B)(iv). The Debtor filed her voluntary petition on August 29, 2014.

*Plan Not Served*

Debtor's plan was filed on May 16, 2014, and has not been served on all interested parties and no Motion to Confirm Plan is pending. The petition in this case was filed on April 18, 2014. No plan was filed with the petition. The Trustee caused the court to issue the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, and Deadlines on May 14, 2014.

A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors, unless the court determines it should be held sooner under 11 U.S.C. § 1324. The first meeting of Creditors was held and concluded on June 12, 2014, so the 45 days will have elapsed by the date of the hearing on this motion. Debtor afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6).

#### *Tax Returns*

Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

#### *Pending Motion to Value*

Debtor's plan relies on the Motion to Value the Secured Claim being filed for CitiFinancial, listed in Class 2C. To date, the Debtor has failed to file a Motion to Value Collateral. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

<p><b>The court's decision is to grant the Motion to Dismiss and dismiss the case.</b></p>
--

The Trustee's Objection to Confirmation, DPC-2, was heard and sustained and hearing on June 24, 2014. To date, the Debtor has failed to file an Amended Plan and set it for confirmation.

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

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

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

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

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

the case is dismissed.

71. [14-27793](#)-E-13 ROMY OSTER  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-14-14 [[11](#)]

**Final Ruling: No appearance at the September 10, 2014 hearing is required.**  
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The Order to Show Cause was served by the Clerk of the Court on Romy Oster, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on August 14, 2014. The court computes that 27 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$310.00 due on July 31, 2014).

<p><b>The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.</b></p>
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The court's docket reflects that the default in payment which is the subjection of the Order to Show Cause has been cured.

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

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

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

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



72. [14-26094-E-13](#) SHEILA GARCIA  
Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-13-14 [[35](#)]

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

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The Order to Show Cause was served by the Clerk of the Court on Sheila Garcia, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on August 13, 2014. The court computes that 28 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 8, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

73. 14-26094-E-13 SHEILA GARCIA  
Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-14-14 [[19](#)]

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

-----

The Order to Show Cause was served by the Clerk of the Court on Sheila Garcia, "Debtor," Trustee, and other such other parties in interest as stated on the Certificate of Service on August 13, 2014. The court computes that 28 day's notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 9, 2014).

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

The court's docket reflects that the default has not been cured. The following filing fees are delinquent and unpaid by Debtor: \$77.00.

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

*Failure to Appear*

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on July 24, 2014 at 10:30 am. Debtor failed to appear and be examined at the First Meeting of Creditors held on July 24, 2014. The meeting has been continued to August 21, 2014 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325.

The Trustee's Report of the August 21, 2014 Meeting of Creditors is that Debtor failed to appear, though counsel appeared.

*Tax Returns*

Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such

documentation exists under 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e) (2) (A) (1).

#### *Business Documents*

Debtor has failed to provide the Trustee with Business Documents, including a questionnaire, two years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance, or written statements that no such documentation exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e) (2) (A) (1).

#### *Delinquency*

Debtor is \$1,927.57 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,927.57 is due August 25, 2014. The case was filed on June 9, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the plan to date.

#### *Filing Fees Not Paid*

On or about July 14, 2014, the court issued an order to show cause set for hearing on September 10, 2014, Dckt. No. 19. Debtor has not paid the filing fee installment of \$77.00 on July 9, 2014 pursuant to the Order Approving Payment of Filing Fees in Installments, Dckt. No. 7.

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.

75. [11-48695-E-13](#) DALE GAGEL AND SUZANNE MOTION TO DISMISS CASE  
DPC-1 MAY 8-13-14 [[77](#)]  
Aaron C. Koenig

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

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

**Below is the court's tentative ruling.**

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

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

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

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

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) on the basis that the Debtors are in material default. The Debtors failed to provide for the priority claim of Mary Bryan, Proof of Claim No. 8, in the amount of \$48,717.91.

Section 2.18 of the Plan makes this failure a breach of the plan. The claim asserts priority status as a domestic support obligation.

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.

76. [11-22596-E-13](#) **DANIEL/MELISSA MCCORMICK** **CONTINUED NOTICE OF DEFAULT AND**  
**DPC-2** **Seth L. Hanson** **MOTION TO DISMISS CASE FOR**  
**FAILURE TO MAKE PLAN PAYMENTS**  
**5-15-14 [98]**

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

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

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

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

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

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

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

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

#### **Debtors' Opposition**

Debtors had previously alleged they that would pay the outstanding plan payments by the July 9, 2014 hearing date to become current under their plan. The court continued the matter from the July 9, 2014 hearing to this hearing date. Civil Minutes, Dckt. No. 106.

Debtors have not, however, provided any evidence or exhibits showing that they have cured their delinquency. Nothing further has been filed on the docket since the previous hearing on the Motion.

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

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

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

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

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

77. 10-21198-E-13 TRACY OLSON  
DPC-5 Leticia Tanner

MOTION TO VACATE DISMISSAL OF  
CASE  
8-19-14 [55]

CASE DISMISSED 7/9/14

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

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

**The Motion to Vacate Dismissal of the Case is granted.**

The Chapter 13 Trustee moves the court for an order to vacate the order dismissing entered this case pursuant to 11 U.S.C. § 1307(c) under Federal Rule of Bankruptcy Procedure 9024.

On August 8, 2014, Debtor Tracy Olson came into the Trustee's Office. Stephanie Lewandowski of the Chapter 13 Trustee's office spoke with Debtor concerning the dismissal of his case. According to the Debtor, he did not receive the Notice of Default filed May 15, 2014, Dckt. No. 48.

Debtor advised that he found out his case was dismissed by one of the



creditors listed in his bankruptcy. Debtor stated that he has tried to have his attorney, Leticia Tanner, Esq., change his address. Pending an audit on Debtor's case, \$3,663.00 remains to be paid to complete Debtor's case.

Debtor submitted a payment of \$1,832.00 on August 11, 2014, which brings Debtor's case current through July 25, 2014. Debtor has agreed to keep the case current until its completion. The Chapter 13 Trustee recommends that the Motion to Vacate the Dismissal be granted.

## **DISCUSSION**

Federal Rules of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts

consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

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 Vacate Dismissal of the Case filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Vacate Dismissal of the Case is granted and the court's order dismissing this case, filed July 9, 2014 (Dckt. 51) is vacated.

**IT IS FURTHER ORDERED** that the Trustee's Notice of Default and Motion to Dismiss, Dckt. 48, (DCN: DPC-5) is denied without prejudice.