

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

**November 13, 2013 at 10:00 a.m.**

---

1. **13-29100-E-13 BRIAN HASLINGER MOTION TO DISMISS CASE**  
**NLE-1 Scott A. CoBen 10-15-13 [[16](#)]**

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, Chapter 13 Trustee, and Office of the United States Trustee on October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,760.00 delinquent in plan payments. The next scheduled payment of \$880.00 is due on October 25, 2013. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments.

**OPPOSITION**

Debtor filed an opposition stating that Debtor will be current on the Plan by the time of the hearing.

However, no evidence has been presented that the Debtor is in fact current. Further, Debtor offers no explanation as to (1) what has caused the failure to make any plan payments, (2) what has caused the Debtor to default in the payments which he promised, and (3) why the defaults shall not continue in the future.

The Debtor offers no evidence in opposition to the Motion, but merely has his attorney present arguments in the Opposition.

**November 13, 2013 at 10:00 a.m.**

The Debtor commenced this case on July 8, 2013, but now four months later the Debtor has been unable to, or has chosen not to, make the payments required under the Plan. The court has reviewed the Debtor's Schedules to see what could cause this catastrophic failure to perform under the Chapter 13 Plan proposed by the Debtor.

On Schedule I the Debtor discloses that he has no dependants and monthly income of \$7,371.00 from a pension or retirement benefit. Dckt. 1 at 21. On Schedule J the Debtor lists monthly expenses of \$6,491.00. *Id.* at 22. The expenses include the following:

A.	Rent.....	\$1,400
B.	Cell Phone (1 person).....	\$ 245
C.	Clothing.....	\$ 150
D.	Laundry.....	\$ 100
E.	Medical/Dental.....	\$ 700
F.	Transportation.....	\$ 500
G.	Renter Ins.....	\$ none
H.	Health Ins.....	\$ none

There does not appear to be anything in the budget showing why from \$7,371.00 should the Debtor be unable to make the payments promised in the Chapter 13 Plan.

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

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

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

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

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

2. [12-25201](#)-E-13 NELSON/ANNELIN LOPEZ MOTION TO DISMISS CASE  
TSB-1 Richard W. Suh, Michael Rinne 10-16-13 [[38](#)]

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

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

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

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

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

3. [12-24804-E-13](#) DENNIS/JEANETTE HAMANN MOTION TO DISMISS CASE  
TSB-3 D. Randall Ensminger 10-16-13 [[118](#)]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee'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 September 10, 2013. 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**

Debtors filed an opposition stating that most recent Amended Plan was denied on September 10, 2013. Since then Debtors' counsel has experienced serious and significant disruption in his practice due to relocation. The new proposed plan is complete and has been presented to Debtors' for approval.

#### **TRUSTEE'S RESPONSE**

Trustee submitted supplemental documents showing that this is the third motion to dismiss for failure to prosecute and delay in confirming an amended plan after the Plan's denial on September 10, 2013.

Debtor's counsel relocated and changed his address on E-filing User Account Maintenance Utility on October 4, 2013. However, failed to notify the Trustee or other parties in interest of his relocation pursuant to Local Rule 2017-1(g).

On October 28, 2013, U.S. Postal Service returned to the Trustee's Office, the Notice which was mailed to the Debtors' Counsel as

undeliverable. On October 29, 2013, Trustee's Office contacted Debtors' Counsel regarding the Motion to Dismiss. Debtors' Counsel confirmed that he had knowledge of the Motion and apologized for his failure to notify of the change of address. Trustee's office sent a copy of the Motion to Dismiss to the Counsel upon request. Debtors' counsel asked for additional time to amend the Plan, however, the Trustee refused that request.

Based on the evidence submitted by the Trustee, the court finds sufficient cause to dismiss the case based on unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Counsel and the Debtors can regroup, file a new case, and prosecute that case, if the Debtor so desires and has the ability to confirm a Chapter 13 Plan.

This bankruptcy case was filed on March 12, 2012. It is now twenty-one months later and there is no motion to confirm a plan pending. The court first denied confirmation of the Debtor's plan because the secured claim of Golden One Credit Union had not been valued as required by the then proposed Plan. May 19, 2012 Order, Dckt. 29.

Then the Debtor's Amended Chapter 13 Plan was denied confirmation because it failed to cure the arrearage on the Bank of America, N.A. claim. July 28, 2012 Order, Civil Minutes, Dckts. 43, 42. The Debtor's next Amended Plan was denied confirmation because of improper amendments to the Chapter 13 Plan form in this District and the Debtor failing to provide all of his disposable income to fund the Plan. December 11, 2012 Order, Civil Minutes; Dckts. 67, 65.

The Debtor's Second Amended Plan was denied confirmation because of Debtor's failure to provide evidence in support of confirmation. The court had continued the confirmation to allow the Debtor to provide supplemental evidence in support of confirmation - but none was provided by Debtor. Oder, Civil Minutes, Dckts. 80, 78.

Confirmation of the Fourth Amended Chapter 13 Plan (the Debtor having voluntarily dismissed the motion to confirm the Third Amended Plan) was denied because of inadequate evidence. The Debtor failed to provide information about an alleged 76 year old "dependent." No information as to why he a "dependent" and the income the 76 year old "dependent." Additionally, the had significant credibility questions for the Debtor and the testimony provided in connection with trying to confirm the Fourth Modified Plan. Civil Minutes, Dckt. 115. These included,

"Third, on Schedule I the Debtors list \$5,700 a month as gross income (which includes \$803 a month average of overtime for Dennis Hamann. Dckt. 1 at 32. No qualification for this income is provided in response to Question 17 on Schedule I. The Debtors do list \$470 a month in deductions for 401K contributions and \$381 a month for 401K loan payments. The Debtors now "net" their income to \$3,910.00, but do not provide the court with an explanation of how they get to this net number. Some of it may be explained in the narrative about having made 401K loan payments, then at least one of the loans paid off, and then the Debtors wanting to use that payment money to reasonably increase their going forward 401K contributions. Further, it may be

that some of this information is buried in the multiple prior declarations of these Debtors, the Schedules, and the Statement of Financial Affairs if only the court would assemble and state that information for the Debtors. The court declines such opportunity, and it appears that this portion of the financial information has been presented in less than a clear manner to the court.

...  
Without explanation, the Debtors have purport to have increased their average monthly income to \$3,910.00 and purport to being able to maintain that throughout 60 months of a plan. Quite possibly the Debtors have addressed this difference with the Trustee, but not the court. It is through this unexplained increase in income that the Debtors basing their increase in plan payments.

...  
To the extent that the arguments of counsel (for which there is no supporting evidence) may address the increasing-decreasing mortgage payment issue and the Debtors' declaration may identify bona fide deductions for 401K contributions and reasonable medical expenses, the Debtors leave unaddressed several key questions. The court has no confidence in what is the Debtors' actual income from employment and if they really had no income in January and February 2012. It does not appear that these debtors are actually under-median income debtors, and no evidence has been provided for why a 76 year old father (for whom no income, benefits, or support) is a "dependant." The Debtors have not demonstrated to the court how their monthly income net income has increased by \$900 a month to \$3,910.00 or how they compute this increased monthly net income."

*Id.*

The following general pattern for the Debtors' prosecution of this case has developed.

- A. March 12, 2012 – Case Filed.
- B. May 21, 2012 – Confirmation of Original Plan Denied.
- C. July 27, 2012 – Denial of Motion to Confirm Original Plan.
- D. August 28, 2012 – Chapter 13 Trustee First Motion to Dismiss for Lack of Prosecution. Set for hearing on October 17, 2012.
- E. October 1, 2012, First Amended Chapter 13 Plan Filed and Motion to Confirm.
- F. October 12, 2012, Chapter 13 Trustee Dismisses Motion to Dismiss Based on First Amended Chapter 13 Plan and Motion to Confirm Filed.

- G. December 12, 2012, Motion to Confirm First Amended Plan Denied.
- H. December 27, 2012, Second Amended Chapter 13 Plan and Motion to Confirm Filed.
- I. March 24, 2013, Motion to Confirm Second Amended Chapter 13 Plan Denied.
- J. April 1, 2013, Chapter 13 Trustee Second Motion to Dismiss Filed.
- K. April 15, 2013, Third Amended Chapter 13 Plan and Motion to Confirm Filed.
- L. May 3, 2013, Chapter 13 Trustee Dismisses Motion to Dismiss Based on Third Amended Chapter 13 Plan and Motion Filed.
- M. May 13, 2013, Debtors Dismiss Motion to Confirm Third Amended Chapter 13 Plan.
- N. July 19, 2013, Fourth Amended Chapter 13 Plan and Motion to Confirm Filed.
- O. September 16, 2013, Motion to Confirm Fourth Amended Chapter 13 Plan Denied.
- P. October 16, 2013, Trustee Files Third Motion to Dismiss Chapter 13 Case.

The inability to confirm a plan in this case does not arise from a disruption in counsel's office. The Debtors have had more than a year to confirm a plan and have made four attempts - not succeeding in any of them. This may be occurring because the Debtors have an unrealistic expectation of what they can accomplish in a Chapter 13 case. It may be because the Debtor are unable to accurately state their income and expenses. Whatever reason, the Debtor have not, and are not, prosecuting this Chapter 13 case. They are going through the motions of this bankruptcy case.

Dismissal of this case will cause the Debtors to reexamination what they are attempting to accomplish and how they are going to do that - within the limitations of the Bankruptcy Code. If they can prosecute a bankruptcy case, they may file a new case. If they need the automatic stay extended in the new case, they may seek relief as appropriate pursuant to 11 U.S.C. § 362(c)(3)(B).

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.





5. [13-23407-E-13](#) MARK/JENNIFER GALISATUS MOTION TO DISMISS CASE  
TSB-3 Daniel M. Davis 10-16-13 [[87](#)]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$1,519.26 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 September 10, 2013. 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).

#### **Debtor's Untimely Opposition**

On November 6, 2013, the Debtors filed an untimely opposition to the Motion. (Opposition to the Motion required to be filed on or before October 22, 2013. L.B.R. 9014-1(f)(1)(B).) No leave to file an untimely opposition was filed by the Debtors.

Failure to respond to a Motion may be deemed a waiver of any opposition to the motion or the basis for the court imposing appropriate corrective and compensatory sanctions. A notice motion to dismiss and hearing date is not merely a "when the debtor gets around to it" calendaring date.

In determining whether the Opposition should be considered, applying the general standard for when relief may be granted under Federal Rule of

Civil Procedure 60(b), the court has reviewed this Opposition. It asserts the following grounds for why this case should not be dismissed.

- A. The Debtors are delinquent in \$1,519.26 in plan payments.
- B. The Debtors have made \$13,225.68 in plan payments to the Chapter 13 Trustee.
- C. The Debtors filed Third Amended Plan on November 6, 2013.
- D. The Debtors' Original Plan provided for insufficient plan payments in light of the actual secured claims and priority claims filed.
- E. The Debtors seek to defer curing the defaults until the hearing on the motion to confirm the Third Amended Plan.
- F. The court's order denying the motion to confirm the Second Amended Plan was filed on September 16, 2013.
- G. Counsel failed to file the Third Amended Plan prior to the Chapter 13 Trustee filing the current Motion to Dismiss.
- H. The Third Amended Plan provides for favorable treatment of creditor claims.

Opposition, Dckt. 93. No evidence is presented by the Debtors in opposition to the Motion to Dismiss, and relies only on the arguments made by counsel in the Opposition.

This case was filed on March 14, 2013. When the Chapter 13 Trustee and Wells Fargo Bank, N.A. filed objections to confirmation of the Original Plan, a First Amended Chapter 13 Plan was filed on April 30, 2013. Dckt. 25. On May 12, 2013, the Debtors dismissed their Motion to Confirm the First Amended Chapter 13 Plan. Dckt. 44.

On June 20, 2013, the Chapter 13 Trustee filed a Motion to Dismiss the Chapter 13 case due to the failure of the Debtors to confirm a plan or have a motion to confirm a plan set for hearing. Dckt. 60. Hearing on the Motion to Dismiss was set for July 31, 2013. On July 16, the Debtors filed their Second Amended Plan and motion to confirm. The Chapter 13 Trustee dismissed his Motion to Dismiss in reliance on the Second Amended Plan and motion to confirm. Dckt. 76.

The court denied the Motion to Confirm the Second Amended Plan. September 16, 2013 filed Order, Dckt. 16. The hearing was conducted on September 10, 2013, and the grounds include the following:

- A. Debtors failed to provide evidence in support of confirmation.
- B. Debtors were delinquent in \$1,519.26 in plan payments.
- C. The above-median income Debtors failed to provide their projected disposable income to fund the plan.

- D. The Debtors have not provided for the Internal Revenue Service Secured Claim filed in the amount of \$23,501.94. (Amended Proof of Claim No. 3, filed June 18, 2013.)

Civil Minutes, Dckt. 84.

The Third Amended Chapter 13 Plan, Dckt. 101, requires monthly plan payments of \$2,106.42. The payments shall be paid to creditors in the following order of priority,

- a. \$0.00 to Debtors' Counsel.
- b. Chapter 13 Trustee administrative expenses.
- c. No Class 1 secured claims.
- d. \$237.53 Class 2 secured claim for restructured payment on Debtors' vehicle loan.
- e. Class 5 priority claims to taxing agencies totaling \$89,494.86.
- f. 0.00% dividend to creditors holding general unsecured claims.

The Class 4 claim secured by the Debtors' residence paid by the Debtors' directly to creditor in the amount of \$2,169.

No provision is made for the secured claim of the Internal Revenue Service. The Debtors have not had the secured claim valued pursuant to 11 U.S.C. § 506(a) and provided for the payment of such valued amount (even if \$0.00) as a Class 2 Claim.

Cause exists to dismiss this case. The Debtors have not, and are not, prosecuting this Chapter 13 case. Dismissal, and the Debtors and counsel having a discussion as to what can and cannot be accomplished in a Chapter 13 case may be what is necessary for the Debtors to prosecute a case.

The motion is granted and the case is dismissed.

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

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

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

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

6. [09-35310](#)-E-13 JOAN WASHBURN  
DPC-8 Peter G. Macaluso

MOTION TO DISMISS CASE  
9-27-13 [[151](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$6,280.00 delinquent in plan payments, which represents multiple months of the \$1,650.00 plan payment. Prior to the hearing, another payment of \$1,650.00 will become due. Therefore, in order to stay current on the Plan, Debtor needs to pay \$7,930.00 by the date of the hearing. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtor filed opposition stating that delay in payment has been caused by eviction of Debtor's business. Debtor intends to file, set and serve a Motion to Modify Plan prior to the hearing.

A review of the docket reveals that no Motion to Modify has been filed, set or served to date.

#### **REVIEW OF CASE**

The Debtor commenced this Chapter 13 case on July 23, 2009. The order confirming the Chapter 13 Plan was filed on October 25, 2009. Dckt. 23. January 15, 2010, the Debtor filed her First Modified Chapter 13 Plan. Dckt. 27. The motion to confirm the First Modified Plan sought to have the plan payments in default, \$4,050.00 as of the time of the December 15, 2009 notice of default, waived. Motion, Dckt. 28. Neither the motion to confirm the First Modified Plan nor the Debtor's declaration in support of that motion, Dckt. 30, identify for the court the cause of the default in

payments. The court denied confirmation of the Modified Plan in part because of the Debtor's failure to provide then current financial information. Civil Minutes, Dckt. 34.

On April 29, 2010, the Debtor filed her proposed Second Modified Chapter 13 Plan. Dckt. 41. The court confirmed the Second Modified Chapter 13 Plan, with the order filed on June 24, 2010. Dckt. 47.

On August 3, 2010, the Debtor filed a Third Modified Chapter 13 Plan. The Motion, Dckt. 51, to confirm the Third Modified Plan does not state the reasons for the modification, but directs the court to read the Debtor's Declaration. The Debtor's Declaration, Dckt. 53, states that the Debtor had an unusual expense of having to pay for a PG&E smart meter which was installed. The Third Modified Chapter 13 Plan was confirmed by the court, with the order filed on October 13, 2010. Dckt. 64.

On March 21, 2011, five months later, the Chapter 13 Trustee filed a notice of default, stating that the Debtor had defaulted in \$4,500.00 (two monthly payments under the Third Modified Plan) of plan payments, and had paid into the Plan \$23,700. Notice of Default, Dckt. 65.

The Debtor responded with a Fourth Modified Chapter 13 Plan. Dckt. 74. The motion to confirm the Fourth Modified Chapter 13 Plan does not state the reason for the default, but directs the court to read the Debtor's declaration. Motion, Dckt. 71. The Debtor's Declaration states that her restaurant was closed for four and one-half months to upgrade the fire suppression system. Declaration, Dckt. 73.

The Declaration offers no explanation as to why the Debtor just stopped making payments and did not see the need to address the issue and amend the plan. Her Fourth Amended Plan and motion to confirm were filed only after the Trustee filed his motion to dismiss this case.

The court denied confirmation of the Fourth Modified Chapter 13 Plan. Order, Dckt. 84, filed December 19, 2011. The court found that the Debtor failed to provide explanations for substantial changes in the budget expenses and income. Further, the budget showing the income and expense changes was not authenticated, nor supported by testimony under penalty of perjury. Civil Minutes, Dckt. 83.

On January 27, 2012, the Debtor filed her Fifth Modified Chapter 13 Plan. Dckt. 89. The court denied confirmation of the Fifth Modified plan by an order filed on March 7, 2012. Dckt. 95. Grounds for denial included: (1) the Debtor being delinquent in plan payments, (2) the Debtor not providing a detailed explanation for dramatic changes in her income and business expenses, and (3) the Debtor provided little competent evidence in support of confirmation. Civil Minutes, Dckt. 94.

The Debtor filed a Sixth Modified Chapter 13 Plan on April 11, 2012. Dckt. 101. The court denied confirmation of the Sixth Modified Chapter 13 plan by order filed on May 29, 2012. Order, Dckt. 117; Civil Minutes, Dckt. 116. As shown in the Civil Minutes, the court was significantly concerned by the inaccurate statements made by the Debtor under penalty of perjury.

On June 29, 2012, the Debtor filed her Seventh Modified Chapter 13 Plan. Dckt. 130. The Seventh Modified Plan was confirmed by the court. Confirmation Order, filed September 16, 2012, Dckt. 150.

On September 27, 2013, one year later, the Chapter 13 Trustee filed the current Motion to Dismiss. The Debtor offers no evidence in opposition, but merely has her attorney submit arguments. Opposition, Dckt. 155. Now, the reason for the current default is that "[t]he delay has been caused by the eviction of [the Debtor's] business, which provides her self-employment income." *Id.* No information is provided as to when the eviction occurred, how and what the Debtor intends to do having been evicted, and why the Debtor has waited, once again, when she has defaulted in the required plan payments, until the Trustee filed the Motion to Dismiss before she took any steps (in this case the mere reply that she was evicted) in prosecuting this case.

Cause exists to dismiss this case. The Debtor has demonstrated that she is not able to prosecute a Chapter 13 case and perform a Plan. Multiple promises have been made, and multiple promises have been broken. Further, the Debtor has failed on many occasions to address her defaults, instead sitting mutely back and waiting until the Trustee catches her in the default. The passive, reactive-only strategy is not indicative of a debtor prosecuting a plan in good faith. FN.1.

-----  
FN.1. In determining whether a Chapter 13 petition has been filed in bad faith under § 1307(c), the bankruptcy court must consider the "totality of the circumstances." *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)) This approach is as appropriate for a 1307(c) inquiry as it is for a 1325(a)(3) inquiry. *Eisen v. Curry (In re Eisen)*, 14 F.3d 469 (9th Cir. Cal. 1994). Although the court agrees that the rejection of a Chapter 13 plan on good-faith grounds should not necessarily lead to dismissal, it is a factor for the bankruptcy court to consider as it determines whether to dismiss the petition pursuant to 1307(c). *Leavitt v. Soto (In re Leavitt)*, 209 B.R. 935 (B.A.P. 9th Cir. 1997), *aff'd*, 171 F.3d 1219, 1223-24 (9th Cir. 1999) ("Although not specifically listed, bad faith is a 'cause' for dismissal under § 1307(c). . . . We hold that bad faith is 'cause' for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c).")  
-----

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. [08-35712](#)-E-13 ELIZABETH HAMMER MOTION TO DISMISS CASE  
DPC-1 Scott A. CoBen 10-11-13 [[43](#)]

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

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

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

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

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

8. [10-52513](#)-E-13 RUBY CORNEJO  
DPC-3 Scott A. CoBen

MOTION TO DISMISS CASE  
10-15-13 [[33](#)]

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

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

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

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

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



9. [13-32113](#)-E-13 ANTHONY/STACY MCKINNEY  
Richard Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-21-13 [[17](#)]

**Tentative Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on October 16, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

**The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.** 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 court shall issue a minute order substantially in the following form holding that:

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

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

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

10. [13-30914](#)-E-13 MICHAEL SIMMS  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-24-13 [[28](#)]

**Tentative Ruling:** 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 October 21, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

**The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.** 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 court shall issue a minute order substantially in the following form holding that:

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

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

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

11. [13-30914](#)-E-13 MICHAEL SIMMS  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-24-13 [[17](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on September 19, 2013). The court docket reflects that on September 30, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

12. [09-42115](#)-E-13 JOSE PATINO  
DPC-3 Steele Lanphier

MOTION TO DISMISS CASE  
9-27-13 [[56](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$715.00 delinquent in plan payments, which represents multiple months of the \$350.00 plan payment. Prior to the hearing, another payment of \$350.00 will become due. In order to bring the Plan current by the date of the hearing, Debtor needs to pay \$1,065.00 prior to the date of the hearing. 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.

13.	<a href="#">13-24815-E-13</a>	HUMBERTO/NORMA AGUILAR	MOTION TO DISMISS CASE
	TSB-2	Thomas O. Gillis	10-16-13 [ <a href="#">56</a> ]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 Chapter 13 Trustee ("Movant") having filed a Notice of Withdrawal of the Motion to Dismiss (Dckt. 70), the withdrawal being consistent with the opposition filed to the motion, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal to be a request for the motion to be dismissed without prejudice, the parties having the right to agree to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bank. P. 9014 and 7041, and no issues

identified by the court with respect to dismissal of this Motion, the court dismisses the Motion without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, the Trustee moving to dismiss this Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, no opposition having been filed, arguments of counsel, and good cause appearing,

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

14. [13-31218](#)-E-13 JOSEPH BOTSCH  
Amir Javideyan

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-1-13 [[22](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on September 26, 2013). The court docket reflects that on October 25, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

15. [13-31619](#)-E-13 MICHAEL/STEPHANIE  
ABERCROMBIE  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-9-13 [[21](#)]

**Tentative Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on October 4, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

**The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.** 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 court shall issue a minute order substantially in the following form holding that:

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

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

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

16. [13-31619](#)-E-13 MICHAEL/STEPHANIE  
TSB-1 ABERCROMBIE  
Pro Se

MOTION TO DISMISS CASE  
10-25-13 [[24](#)]

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 October 25, 2013. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtors did not commence making plan payments and is \$1,840.00 delinquent in plan payments. The Debtors have paid \$0.00 into the Plan to date. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

The Plan was filed on September 25, 2013 after the Trustee issued the 341 Notice on September 20, 2013. The Trustee asserts that the Debtors 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, Debtors 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 Debtors did not appear at the Meeting of Creditors held on October 24, 2013 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 Meeting has been continued to November 21, 2013 at 10:30 a.m.

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

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

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

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

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

17. 09-23720-E-13    **TERRENCE/LISA RICHARDSON**    **MOTION TO DISMISS CASE**  
DPC-2                      **Mark A. Wolff**                      10-1-13 [[113](#)]

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 October 1, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Dismiss and dismiss the case.** Oral argument may be presented by the parties at the scheduled hearing. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee seeks dismissal of the case on the basis that the Debtor is \$5,660.00 delinquent in plan payments, which represents multiple months of the \$2,500.00 plan payment. Prior to the hearing, another payment of \$2,500.00 will be due. Therefore, Debtor will need to pay \$8,160.00 in order to bring this Plan current by the date of the hearing. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION**

Debtors filed an opposition to Trustee's Motion to Dismiss stating that Debtors are in the process of determining the feasibility of the current Plan and preparing a modified Plan.



Based on a review of the docket, no Motion to Modify has been filed, served or set for hearing to date.

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

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

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

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

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

18.	<a href="#">13-30221</a> -E-13	MICHAELA VAN DINE AND	MOTION TO DISMISS CASE
	TSB-3	PIOTR REYSNER	10-16-13 [ <a href="#">42</a> ]
		Pro Se	
		CASE PREVIOUSLY DISMISSED	
		AS TO PIOTR REYSNER ONLY	

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

The Chapter 13 Trustee ("Movant") having filed a Notice of Withdrawal of the Motion to Dismiss the Chapter 13 case (Dckt. 66), the withdrawal being consistent with the opposition filed to the motion, no prejudice to the responding party appearing by the dismissal of the Motion, the court construing the Notice of Withdrawal to be a request for the motion to be dismissed without prejudice, the parties having the right to agree to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bank. P. 9014 and 7041, and no issues identified by the court with respect to dismissal of this Motion, the court dismisses the Motion without prejudice.

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

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

The Motion to Dismiss the Chapter 13 case filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, the Trustee moving to dismiss this Motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, no opposition having been filed, arguments of counsel, and good cause appearing,

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

19. 12-26623-E-13 NAVRAJ/INDU JASUJA MOTION TO DISMISS CASE  
TSB-1 Peter G. Macaluso 10-16-13 [[99](#)]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to deny the Motion to Dismiss without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee filed a Motion to Dismiss based on the Debtors' failure to provide for the priority claim of the Employment Development Department in the amount of \$172.53. This is a breach of the Plan pursuant to §2.13. Debtor was provided a Notice of Filed Claims on November 8, 2012 (Dckt. 78), which listed this claim on page 7 as a priority and not provided for in the Plan. On page 2, item (f), indicated that Motion to Modify the Plan was required.

#### **OPPOSITION**

Debtors filed an opposition to the Plan indicating that Debtors intend to file, set, and serve a Motion to Modify prior to the hearing on this matter.

On November 8, 2013, the Debtors filed the Second Modified Plan and motion to confirm. Dckts. 105, 106. The Declaration filed in support of the Second Modified Plan provides specific testimony and information concerning the defaults and the current financial information. This addresses the Trustee's grounds for the present Motion to Dismiss.

Cause does not exist to dismiss this case. The motion is denied without prejudice.

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

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

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

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

20. [13-29328-E-13](#) RANA DOMONDON MOTION TO DISMISS CASE  
NLE-1 Robert Hale McConnell 10-15-13 [[45](#)]

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 October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that Debtor did not commence making plan payments and is \$8541.91 delinquent in plan payments. The next scheduled payment of \$4,657.22 is due on October 25, 2013. Debtor has paid \$0.00 into the Plan to

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

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

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

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

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

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

21.	<a href="#">12-24832</a> -E-13	APRIL BROWN	MOTION TO DISMISS CASE
	TSB-1	Rabin J. Pournazarian	10-16-13 [ <a href="#">25</a> ]

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

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

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

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

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

22. [12-23733](#)-E-13 LINDA MIDGETT MOTION TO DISMISS CASE  
TSB-1 J. Honaker, William H. Hummel 10-16-13 [[63](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss, 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, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss.**

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 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 is dismissed without prejudice.

23. [11-40435](#)-E-13 DIANE OHARA  
TSB-2 Peter G. Macaluso

MOTION TO DISMISS CASE  
10-16-13 [[59](#)]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Debtor's Plan will complete in 54 months as opposed to 36 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). As a result, Debtor is in material breach default pursuant to §6.03 of the Plan. Additionally, the priority portion of the claim filed by the Internal Revenue Service was \$14,282.49, which is more than scheduled.

Debtor was provided a Notice of Filed Claims on April 13, 2012 (Dckt. 21) which indicated that a Motion to Modify was required, page 2, item (f), if the Notice of Filed Claims includes allowed claims that will prevent the Plan from being completed on time.

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. [09-32342](#)-E-13 LELA LENDO MOTION TO DISMISS CASE  
DPC-1 Bert M. Vega 10-11-13 [[131](#)]

CASE DISMISSED 11-6-13

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

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

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

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

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

25. [09-33043](#)-E-13 JENNIFER EDMONSON  
DPC-4 Mary Ellen Terranella

MOTION TO DISMISS CASE  
10-15-13 [[45](#)]

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 October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$386.00 delinquent in plan payments, which represents multiple months of the \$195.00 plan payment. Prior to the hearing, another payment of \$195.00 will be due. As a result, Debtor will need to pay \$581.00 to bring this Plan current by the date of the hearing. 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.



26. [12-24543](#)-E-13 CHARLES/CHRISTINE FORD MOTION TO DISMISS CASE  
TSB-1 NEIL ENMARK 10-16-13 [[38](#)]  
Brandon Scott Johnson

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that by the Trustee's calculation, the Plan will complete in 59 months as opposed to 36 months proposed. 11 U.S.C. § 1307(c)(6) permits the dismissal if there is a material default by the debtor with respect to a term of a confirmed plan.

#### **OPPOSITION FILED**

The Debtor file opposition stating that the original plan needs to be modified due to an unaccounted unsecured claim that does not allow the plan to complete within the confirmed time frame. In addition, the Debtor states a Modified Plan will be on file prior to the hearing of this motion.

However, based on a review of the docket, a Modified Plan has not been filed, set or served to date.

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

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

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

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

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

27.	<a href="#">11-49750</a> -E-13	JUDITH ROTH	CONTINUED MOTION TO DISMISS
	TSB-1	NEIL ENMARK	CASE
		Michael O'Hays	6-28-13 [ <a href="#">23</a> ]

CONT. FROM 9-4-13, 7-31-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

#### **PRIOR HEARING**

The Chapter 13 Trustee argues that the Debtor's proposed plan will complete in 74 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Trustee argues that the debtor is in material default of the terms of the plan.

Debtor responds, arguing that Debtor did not include student loan debt that she co-signed for her niece because she considered the obligation to be her nieces's obligation and only the obligation of her niece if she defaulted. However, Wells Fargo filed a claim for \$22,424.90 for this obligation, which has resulted in this motion to dismiss.

Debtor asserts they will be objecting to the Wells Fargo claim and asking for a determination that they will not be paid a dividend from her monthly payment, calendared for August 20, 2013. Debtor states if the determination is made that Wells Fargo has to be provided for in Debtor's plan, she will file a modified plan in two weeks.

A review of the docket shows that Debtor filed an Objection to Claim of Wells Fargo Bank, N.A. on July 23, 2013, set for hearing on August 20, 2013.

## CONTINUANCE

The Objection to Claim of Wells Fargo Bank, N.A. was heard on August 20, 2013 at 3:00 and further continued to October 8, 2013 at 3:00. Dckt. 40. The court heard the Objection to Claim and overruled the objection on October 18, 2013. While the Debtor may intend to pay \$0.00 on this claim, providing for it in Class 6, there was not a basis for denying the claim.

The Debtor not having proposed to modify the plan to address the co-signor student loan debt the plan appears to not be feasible and cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

28. [09-48453](#)-E-13 STEVEN/DONNA MENSER  
DPC-6 Julian Roberts

CONTINUED MOTION TO DISMISS  
CASE  
7-30-13 [[222](#)]

**CONT. FROM 9-4-13**

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, Debtor's Attorney, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

**No Tentative Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

## **PRIOR HEARING**

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,294.98 delinquent in plan payments, which represents multiple months of the \$691.40 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

## **DEBTOR'S OPPOSITION**

Debtor responded, stating that Debtors completed their confirmed plan on January 23, 2013, and are entitled to a discharge. Debtor contends that the Trustee made an error in calculation and that according to the confirmed plan, Debtors were to pay \$1,214.00 per month for 36 months for a total of \$43,704.00. The Trustee states \$44,946.77 and Debtor states they have overpaid \$1,242.77 and are not in default.

## **TRUSTEE'S RESPONSE**

The Trustee states there has been some confusion in this case. Trustee asserts the confusion began with debtor's Fourth Amended Chapter 13 plan, where they moved the mortgage creditor (BAC Home Loan) from Class 1 to Class 4 as a result of successfully modifying their loan. Up to the point of the Debtors filing the Fourth Amended Plan, Trustee was paying BAC Home Loan as Class 1 with ongoing payments in the amount of \$3,002.91 per month for a total of \$18,017.46 (6 months).

The Fourth Amended Plan lowered the plan payment from \$4,826.30 to \$1,214.00, but Debtors made the new plan payment effective back to the beginning of the case and failed to account for the \$18,017.46 that was paid to BAC Home Loan by the Trustee.

The Trustee states the confusion began when the Trustee filed an objection to the Fourth Amended Plan correctly pointing out that \$18,017.46 has been paid to BAC Home Loan but the objection incorrectly gave the impression that Debtors had overpaid the Trustee by \$10,627.35. Debtors apparently had paid into the plan what they needed to, but because the payment terms of the Fourth Amended Plan failed to account for the past payments made by the Debtors, it gave the appearance of overpayments, rather than an actual overpayment.

Trustee states the word "overpaid" confused debtors' counsel who in turn filed a Fifth Amended Plan wherein Debtors correctly acknowledged the past payments into the plan, but then reduced the remaining plan payment down to \$691.40 per month. In response to the reduction in payments, Trustee objected to the plan and was left "scratching its head" over the Debtors explanation of spreading the overpayment over the remaining 18 months of the plan.

The Trustee states that the Fifth Amended Plan should have never been confirmed since it did not propose a payment stream sufficient to pay the claims it proposed to pay, but due to the confusion in this case, somehow it got confirmed. The Trustee states that he should have filed a motion to reconsider, but Lawrence Loheit was retiring and the current Trustee was stepping in.

The Trustee argues that while the debtors have paid all payments called for under the erroneously confirmed chapter 13 plan (Fifth Amended Plan), debtors have not finished payment the claims intended to be paid by their plan. Therefore, debtors have not completed their plan. The Trustee states that a priority claim of the Internal Revenue Service remains to be paid. Trustee argues that the plan is not complete and it is still possible for the debtor to modify the plan.

## DISCUSSION

Cutting through the "confusion" of prior amended plans, the terms of the current confirmed plan, and the alleged errors in calculation, the pertinent question is whether the confirmed plan sufficiently provides for the payment of the claims. The confirmed Fifth Amended Plan provides for two Class 2 claims in the amounts of \$114.73 and \$495.23, \$4,000.00 in attorneys fees, two Class 5 claims of \$11,796.00 and \$6,216.00, and for Trustee Fees. The Trustee also made payments to BAC Home Loans prior to confirmation of the amended plan and the loan modification in the amount of \$18,017.46. Based on the foregoing, the court determines that the total of \$76,627.14 need to be paid under the plan (estimating the Trustee fees at 8%). The Trustee states \$44,946.77 has been paid into the plan as of the date of the Motion to Dismiss. Therefore, the Debtor needs to pay in approximately \$31,680.37 over the remaining 16 months of the plan. The court estimates the monthly payment to be approximately \$1,980.02 per month.

The following charts summarize the court's analysis:

### Plan Payments to Trustee by Debtors Under Plan

Payments Made Prior to Fifth Amended Plan	\$31,265.35
Payments Made Under Fifth Amended Plan as of Motion to Dismiss	\$13,681.42
Total Plan Payments as of Motion to Dismiss	\$44,946.77

### Plan Payments to Creditors and Expenses

Class 2 Pmt for 60 Months	114.73	60	\$6,883.80
Class 2 Pmt for 60 Months	495.23	60	\$29,713.80
Attorneys Fees Paid Through Plan			\$4,000.00
Trustee Fees Paid Through Plan (assume 8%)		0.08	\$0.08
Home Loan Payments Made by Trustee Prior to Fifth Amended Plan			\$18,017.46

Class 5 Tax Claim Paid Through Plan		\$11,796.00
Class 5 Tax Claim Paid Through Plan		\$6,216.00
Total Monies to be Disbursed Under Plan		\$76,627.14
Payments into Plan as of Filing of Motion to Dismiss		(\$44,946.77)
Projected Additional Payments Required Under Plan		\$31,680.37
Months Remaining Under Plan	16	
Projected Monthly Payment Amount For Remainder of Plan		\$1,980.02

As the current plan provides for \$691.40 per month, the plan payment is not sufficient to provide for the payment of the claims in the confirmed plan.

#### **CONTINUANCE**

The court granted a continuance in order for the Debtor to determine a course of action.

Trustee requested the motion be continued to October 2, 2013, due to counsel for Debtor's unavailability. The court granted this request in the Order filed September 16, 2013. Dckt. 237.

#### **TRUSTEE'S SUPPLEMENTAL PLEADINGS**

The Trustee filed a supplemental Declaration of Yvette Sanders, stating that the Debtor has paid a total of \$44,946.77, with the last payment received on January 23, 2013, with a total of \$49,241.75 due. The Trustee provides his own analysis, based on actual claim amounts submitted by Debtors' Class 2 and 5 creditors.

The Trustee determines that \$58,225.74 needs to be paid under the plan, when the Debtors have only paid \$44,946.77 into their plan to date. Therefore, the Debtor's remaining balance to be paid into the plan is approximately \$13,270.53.

Based on the above analysis the court continued the hearing on the Motion to Dismiss. The court further ordered that on or before October 15, 2013, the Debtor and Trustee shall file supplemental pleadings setting forth how each compute the amount which must be funded for the remainder of the plan to properly fund the payments required thereunder.

#### **DEBTOR'S RESPONSE ON OCTOBER 14, 2013**

Debtors noted that there was a double payment to BAC Home Loans, and that the Debtors as well as Debtors' attorney tried to solve the problem. However, due to various communication problems, Debtors' attempt to solve the overpayment issue never succeeded.

Debtors further suggested that searching for blame in this matter is valueless. Debtors request that since Debtors have been trying actively to resolve their financial difficulties and acted in good faith, the court:

1. provides such discretion as will enable the parties to resolve the discrepancies to the Court's and their mutual satisfaction;
2. support the effort by providing reasonable time lines to accomplish the task; and
3. provide such other direction as the Court perceives will lead to a reasonable and equitable.

Debtors also suggested potential solutions to the problem. Debtors and IRS have an agreement allowing Debtors to make minor payments to the IRS until Debtors' Bankruptcy case is finished. Communication with BAC Home Loans or their successor may provide a way to return the Trustee's overpayments. According to the Trustee's accounting, this will provide about \$18,000.00 in funds.

#### **TRUSTEE'S RESPONSE ON OCTOBER 21, 2013**

Trustee responded by pointing out an potential misunderstanding by the Debtors. There was no double-payment made to BAC Home Loans by the Trustee. Trustee further provided evidence of the Trustee's payment to BAC Home Loans starting with the September 2010 disbursements. As a result, the Trustee disbursed a total of \$18,017.46 in ongoing mortgage payments to BAC Home Loans from September 30, 2010 to February 28, 2011.

Additionally, Trustee requests the Court to consider the following matters. Debtors mentioned an "overpayment" or "double payment" to BAC Home Loans, but have never provided any evidence of direct payments made by Debtors to BAC Home Loans. If Debtors were in fact paying BAC Home Loans directly, this would have been contrary to what was proposed in their Amended plan. Therefore, if there is "overpayment," it is up to Debtors to recover any "double" payments they may have made. The Trustee is willing to assist in the recovery of any proceeds, but will not "lead the charge." The Trustee is also not opposed to Debtors paying the IRS directly as long as Debtors can reach an agreement with the IRS.

#### **DISCUSSION**

There is little in dispute with respect to the present Motion. The Debtors have failed to sufficiently fund the Plan which has been confirmed in this case. The Debtors, now understanding the problem, have not sought to modify the plan or request a hardship discharge. Rather, the Debtors seek to draft the court to serve as their legal counsel and direct the parties what to do to prosecute this case. Such is not the role of the court.

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

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

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

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

29. [13-22454](#)-E-13 MAHMOOD/ROSELYN MOHAMMED MOTION TO DISMISS CASE  
TSB-2 Mary Ellen Terranella 10-16-13 [[67](#)]

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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,224.00 delinquent in plan payments, which represents multiple months of the \$2,112.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to



Debtor's prior plan on August 20, 2013. 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.

30. [13-28454-E-13](#) TERESA BURNS  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
9-27-13 [[48](#)]

CASE DISMISSED 10/5/13

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

31. [10-20455](#)-E-13 TODD/JUDY LINDENMUTH MOTION TO DISMISS CASE  
DPC-7 Mark Wolff 10-11-13 [[170](#)]

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

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

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

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

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

32. [13-27956](#)-E-13 PATRICIA HEUSTESS AMENDED ORDER TO SHOW CAUSE -  
Pro Se FAILURE TO PAY FEES  
CASE DISMISSED 10/5/13 9-19-13 [[68](#)]

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

33. [13-31356](#)-E-13 ERACLIO CORTEZ MOTION TO DISMISS CASE  
TSB-1 C. Anthony Hughes 10-16-13 [[17](#)]

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

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

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

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

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

34. [11-33759](#)-E-13 ANTHONY/DAWN BASURTO  
DPC-4 Peter G. Macaluso

MOTION TO DISMISS CASE  
9-27-13 [[105](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$32,395.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

#### **OPPOSITION FILED**

Debtors contends that the delay in payment was caused by the negotiations with the holder of the first deed of trust for a loan modification which has now been approved by the Court. Debtors intend to have filed, set and served a Motion to Confirm prior to the hearing of this case.

A review of the docket reveals that no Motion to Modify has been filed, set or served to date.

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

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

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

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

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

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

35.    [13-29964-E-13](#)    **DARIO COLLINS**    **MOTION TO DISMISS CASE**  
         **NLE-2**                    **Pro Se**                    **10-15-13 [[31](#)]**

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 October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$400.00 delinquent in plan payments, which represents multiple months of the \$200.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

36. [09-33265](#)-E-13 ARMANDO/JESSENITH SORIANO MOTION TO DISMISS CASE  
DPC-7 Dennis Wheeler 9-27-13 [[61](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,213.72 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

37. [12-27366](#)-E-13 FLOYD/SUE SNODGRASS  
TSB-1 Jeffrey Ogilvie

MOTION TO DISMISS CASE  
10-16-13 [[35](#)]

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

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

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

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

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

38. [13-29966](#)-E-13 GARY BROWN  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-3-13 [[26](#)]

CASE DISMISSED 10/5/13

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

39. [09-25574](#)-E-13 MAISHA WEARY  
DPC-9 Julius Engel

MOTION TO DISMISS CASE  
9-27-13 [[86](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$1,035.00 delinquent in plan payments, which represents



multiple months of the \$345.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

40.	<a href="#">13-31975</a> -E-13	JACK/LINDA GANAS	MOTION TO DISMISS CASE
	TSB-2	Peter Cianchetta	10-24-13 [ <a href="#">18</a> ]

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

41. [12-37378-E-13](#) PAUL MARINO  
DPC-2 John Tosney

MOTION TO DISMISS CASE  
10-11-13 [[45](#)]

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 October 11, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$15,198.00 delinquent in plan payments, which represents multiple months of the \$2,533.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

42. [13-28480](#)-E-13 CHARLES/TAMYRA HEARD  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-28-13 [[48](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on October 23, 2013). The court docket reflects that on October 31, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

43. [13-21082-E-13](#) LEE/REBECCA JASPER  
NLE-2 Pro Se

MOTION TO DISMISS CASE  
10-15-13 [[83](#)]

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 (*pro se*) and Office of the United States Trustee on October 15, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$450.00 delinquent in plan payments, which represents one month of the \$450.00 plan payment. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 10, 2013.

#### **OPPOSITION FILED**

Debtors responded by stating that they were under the impression that they had ninety days after service by the Trustee of the Notice of Filed claims to modify and serve an amended plan.

In addition, Debtors did not intend to cause unreasonable delay to their creditors. Debtors planned to pay off their 2005 Grand Prix before submitting the new plan by November 8, 2013. Debtor is also attempting to modify their contract with Wells Fargo. For the foregoing reasons, Debtors request the court to allow Debtors the ninety days in which to file their amended plan and Notice to Confirm.

The court is unclear how Debtor thought they had 90 days (three months) to file an amended plan. Furthermore, a review of the docket reveals that no Motion to Modify has been filed, set or served to date, which is past the November 8, 2013 date stated by the Debtors.

The court finds this is unreasonable delay which is prejudicial to creditors

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

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,

**November 13, 2013 at 10:00 a.m.**  
**- Page 53 of 59 -**

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.

45.    09-38291-E-13    RONALD/ANGELA GATES                      MOTION TO DISMISS CASE  
DPC-11                      John Tosney                      9-27-13 [[76](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$3,282.76 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

46. [13-31392](#)-E-13 MANUEL HERNANDEZ MOTION TO DISMISS CASE  
TSB-2 Timothy J. Walsh 10-24-13 [[39](#)]

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 October 24, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$3,599.00 delinquent in plan payments, which represents one month of the \$3,599.00 plan payment. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

47.	<a href="#"><u>13-32094</u></a> -E-13	ANGELA HUGHES	MOTION TO DISMISS CASE
	TSB-2	Andy Warshaw	10-30-13 [ <a href="#"><u>29</u></a> ]

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



Local Rule 9014-1(f)(1) Motion - 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 October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Trustee 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 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).

Causes exist 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.

49. [09-27598-E-13](#) DARCI SCHMIDT MOTION TO DISMISS CASE  
DPC-2 Brandon Scott Johnston 9-27-13 [[63](#)]

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 September 27, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

The Trustee argues that the Debtor did not commence making plan payments and is \$7,226.67 delinquent in plan payments. 11 U.S.C. §1307(c)(4) permits the dismissal or conversion of the case for failure to commence plan payments. The Debtor presented no opposition to the Motion.

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

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

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

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

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

50.	<a href="#"><u>13-30898-E-13</u></a>	WINONA EDMONSON	MOTION TO DISMISS CASE
	TSB-1	Peter G. Macaluso	10-16-13 [ <a href="#"><u>25</u></a> ]

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

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

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

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

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