

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

January 8, 2014 at 10:00 a.m.

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1. [13-33706](#)-C-13 TROY FINLEY AND TIFFANY ORDER TO SHOW CAUSE - FAILURE
Thru #2 MCINTYRE-FINLEY TO PAY FEES
Pro Se 12-2-13 [[25](#)]

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 installment payment due on November 25, 2013). The court docket does not reflect that the fee has been paid.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 16, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is delinquent \$1,240.00 in plan payments to the Trustee to date and the next scheduled payment of \$1,240.00 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
3. Debtor filed a plan on November 19, 2013 but has yet to file a Motion to Confirm the plan. Debtor is causing unreasonable delay that may be prejudicial to creditors.
4. Debtor is a serial bankruptcy filer; this is Debtor's eighth bankruptcy filing since 2010. Debtor's filing history:

Case Number	Filing Date	Result
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2010-52849-7	December 16, 2010	Discharge
2010-50946-7 (T. Finley)	November 23, 2010	Dismissed
2012-41643-13 (T. McIntyre)	December 19, 2012	Dismissed
2013-20484-13 (T. McIntyre)	January 15, 2013	Dismissed
2013-21928-13 (T. McIntyre)	February 14, 2013	dismissed
2013-23779-13 (T. McIntyre)	March 21, 2013	Dismissed
2013-25495-13	April 22, 2013	Dismissed

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

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

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

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

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

3. [13-30309](#)-C-13 MICHAEL/ARLENE DISESSA ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
12-9-13 [[38](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$51.00 installment payment due on December 3, 2013). The court docket reflects that the final installment payment was made on December 27, 2013.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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.

4. [11-48510](#)-C-13 PAUL SCHRUPP MOTION TO DISMISS CASE
NLE-1 Stephen M. Reynolds 12-9-13 [[46](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtor's Bankruptcy Case because Debtor is causing unreasonable delay that is prejudicial to creditors. Debtor's Ex Parte Application for Order Setting Aside Plan Confirmation (Dkt. 39) was granted on July 2, 2012. Debtor has not yet filed an amended plan.

Debtors' Opposition

Debtor opposes Trustee's Motion and requests that the hearing on the Motion be continued until a hearing on Debtor's Motion to Confirm Second Modified Plan can be heard. Debtor states the delay in filing a new plan was due to a change in the National Data Center website that denied Debtor's counsel access to the site for two weeks.

Trustee's Response

Trustee states that Debtor's explanation does not sufficiently demonstrate why, after 548 days, Debtor has not filed an amended plan. The Declaration filed with Debtor's opposition states that counsel was denied access to the National Data Center website starting December 17, 2013.

To date, Debtor have not filed a Modified Plan and corresponding Motion to Confirm. Debtor does not sufficiently explain the delay in filing a plan. Therefore, cause remains to dismiss Debtors' case for unreasonable delay under 11 U.S.C. § 1307(c)(1).

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 November 26, 2013. 28 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtors are not sufficiently prosecuting their bankruptcy. Trustee's Objection to Confirmation was sustained on October 8, 2013 and Debtors have not yet filed an Amended Plan.

Debtors' Opposition

Debtors state that an amended plan and motion to confirm were filed on December 10, 2013. Debtors explain that the delay in filing was due to lack of communication from the Trustee's office concerning liquidation issues.

Debtors filed a Modified Plan and Motion to Confirm on December 10, 2013 (Dkt. Nos. 43 & 48). The court is satisfied that Debtors are sufficiently prosecuting their case. Therefore, Trustee's Motion is denied without prejudice.

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

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

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

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

7. [13-32814](#)-C-13 JESSIE PAJKOS-GARDNER AND ORDER TO SHOW CAUSE - FAILURE
CRYSTAL PAJKOS TO PAY FEES
Mikalah R. Liviakis 12-9-13 [[24](#)]

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 installment payment due on December 2, 2013). The court docket does not reflect that the fee has been paid.

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

8. [13-31815](#)-C-13 DAVID/ANN COLTRIN MOTION TO DISMISS CASE
TSB-1 John David Maxey 11-20-13 [[26](#)]

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 November 20, 2013. 28 days' notice is required. That requirement was met.

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

oral argument. The court will issue its ruling from the parties' pleadings.

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

The Trustee seeks dismissal of the case for the following reasons:

1. Debtor Ann Coltrin did not appear at the Meeting of Creditors as required under 11 U.S.C. § 342. She also did not appear at the Continued Meeting of Creditors held on December 12, 2013.
2. Debtor is delinquent \$436.00 in plan payments to the Trustee to date and the next scheduled payment of \$436.00 is due on November 25, 2013. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
4. Debtor Mr. Coltrin admitted at the First Meeting of Creditors that not all tax returns during the four-year period preceding the filing of the Petition have been filed. 11 U.S.C. §§ 1308 and 1325(a) (9).
5. Debtors' total unsecured debts total \$779,207. Per 11 U.S.C. § 109(e), the unsecured debt limit for Chapter 13 is \$383,175.
6. Debtor Mr. Coltrin did not provide verification of his Social Security Number at the First Meeting of Creditors.

Cause exists to dismiss this case. The delay in filing required documents and failure of Ms. Coltrin to appear at required meetings is causing delay that is prejudicial to creditors. 11 U.S.C. § 1307(c) (1). Debtors are not making required plan payments. 11 U.S.C. § 1307(c) (4). Debtors have not provided the Trustee with tax documents. The motion is granted and the case is dismissed.

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

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

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

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

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 November 14, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case because Debtors have not filed a Chapter 13 plan and is engaging in unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). Furthermore, Debtors have not filed the following documents:

1. Form 22C
2. Schedules A-J
3. Statement of Financial Affairs
4. Statistical Summary
5. Summary of Schedules

Cause exists to dismiss this case as Debtors are not sufficiently prosecuting their case and are causing unreasonable delay that is prejudicial to creditors. The motion is granted and the case is dismissed.

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

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

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

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

10. [13-23022](#)-C-13 JAY REESE MOTION TO DISMISS CASE
NLE-1 Stephen J. Johnson 12-9-13 [[90](#)]

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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case for the following reasons:

1. Debtor is \$200.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$200.00 is due on December 25, 2013. Debtor has paid \$1,400.00 into the plan to date.
2. Debtor's Motion to Confirm was withdrawn by Debtor on November 19, 2013 and Debtor has not filed an Amended Plan. Debtor has filed a Motion to Dismiss, which is set for hearing on January 14, 2014.

Cause exists to dismiss this case as Debtor's are not prosecuting this case and are delinquent in plan payments. 11 U.S.C. § 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.

11. [13-32222](#)-C-13 MOHAMMED KHAN ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
12-23-13 [[34](#)]

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 installment payment due on December 17, 2013). The court docket reflects that the final installment payment was received on January 1, 2014.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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. [12-29627](#)-C-13 DONALD BIENEMAN MOTION TO DISMISS CASE
NLE-1 C. Anthony Hughes 12-9-13 [[23](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 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 Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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.

13. [13-30236](#)-C-13 PAUL PERIOLAT ORDER TO SHOW CAUSE - FAILURE
Mikalah R. Liviakis TO PAY FEES
12-5-13 [[38](#)]

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 installment payment due on December 2, 2013). The court docket reflects that the final installment payment was made on December 10, 2013.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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.

14. [13-34338](#)-C-13 JESSICA RAMSEY ORDER TO SHOW CAUSE - FAILURE
C. Anthony Hughes TO PAY FEES
12-13-13 [[16](#)]

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 installment payment due on December 9, 2013). The court docket reflects that the final installment payment was made on December 18, 2013.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

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

Local Rule 9014-1(f)(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. 28 days' notice is required. That requirement was met.

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).

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:

A previous hearing on the Trustee's Motion took place on November 13, 2013. At that hearing, the court continued this matter to January 8, 2014 to permit resolution of a priority claim issue outside of the plan. At this hearing the court anticipates receiving an update on the status of the priority claim. No update is provided on the court's docket.

Previous

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default with respect to the terms of the confirmed plan. Debtor did not provide for the priority claim of the State Board of Equalization in the amount of \$9,745.09. Section 3.18 of the Plan makes this a breach. Debtor was provided Notice of Filed Claims on February 21, 2012, which listed this claim as Claim 14 on page 10 as a priority and not provided for in the plan.

Debtors' Opposition

Debtors request the Motion to Dismiss be continued to allowed the claim of the Board of Equalization to be paid outside the plan and then withdrawn from this case.

The Board of Equalization's claim stems from a personal assessment of unpaid sales tax owing from a failed corporation named Bohmann and Frost, Inc. All the shares of Bohmann and Frost, Inc. were owned by either Debtor or Michael Bohmann. Mr. Bohmann is now a debtor in an active Chapter 7 case (13-204460) in which the Board of Equalization filed a priority tax claim in the amount of \$10,622.23 for a personal assessment of unpaid sales taxes stemming from Bohmann and Frost, Inc. In Mr. Bohmann's case, the Trustee filed a final report proposing to pay the Board of Equalization the amount of \$7,399.52 from estate funds.

Mr. Bohmann has promised Debtor that once the funds are disbursed from his case, he will immediately pay the remainder of the balance owing for any unpaid sales taxes stemming from Bohmann and Frost, Inc.

Discussion

Debtors' confirmed their plan on September 21, 2011. While Debtors' action is a breach of the plan, according to the term plans, the court is inclined to continue the matter to allow resolution of the priority claim outside the plan. This will allow Debtors to continue in their current plan of reorganization. If payment of the priority debt is not made outside the plan, Debtors should be prepared to present a modified plan and motion to confirm promptly to 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 -----.

16. [13-24843](#)-C-13 ROBERT/KATHLEEN PECK MOTION TO DISMISS CASE
DPC-1 W. Scott de Bie 11-26-13 [[19](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 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 Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

17. [13-32947](#)-C-13 JEREMY/TANYA DAVIDEK ORDER TO SHOW CAUSE - FAILURE
David M. Alden TO PAY FEES
12-9-13 [[29](#)]

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 installment payment due on December 2, 2013). The court docket reflects that the payment was received on January 2, 2014.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

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

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

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 13, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$1,023.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,023.00 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date. 11 U.S.C. § 1307(c).
3. Debtor is a serial filer. This is Debtor's seventh bankruptcy case filed since 2008.

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

19. [13-31852](#)-C-13 FRED/EILEEN LIGHT ORDER TO SHOW CAUSE - FAILURE
Marc A. Caraska TO PAY FEES
12-16-13 [[25](#)]

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 December 9, 2013). The court docket reflects that the fee has not been paid. The Order to Show cause is sustained.

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

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 ordered, and the case is dismissed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 13, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors and Trustee does not have sufficient information to determine whether the plan is feasible under 11 U.S.C. § 1325.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
3. Debtor has not filed all pre-petition tax returns required for the four years preceding the filing of the petition. 11 U.S.C. § 1308 and 1325(a)(9).

Cause exists to dismiss the case as Debtor's faults are causing unreasonable delay that is prejudicing creditors. 11 U.S.C. § 1307(c)(1). The motion is granted and the case is dismissed.

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

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. [13-33368](#)-C-13 LUIS BOLANOS MOTION TO DISMISS CASE
TSB-1 Vito Torchia 12-13-13 [[24](#)]

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 December 13, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case for the following reasons:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor is \$549.20 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$549.20 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not adequately disclose a prior Chapter 7 case (09-34925).

Cause exists to dismiss this case as Debtor is causing unreasonable delay that is prejudicial to creditors, has not filed required documents, and is not adequately disclosing necessary information. 11 U.S.C. § 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.

22. [12-31370](#)-C-13 NICHOLAS/PAMELA KOPAC MOTION TO DISMISS CASE
NLE-1 Tommy Conlon 12-9-13 [[32](#)]

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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case for the following reasons:

1. Debtor is in material default under Section 5.03 of the plan. Under section 5.03, Debtor's plan must complete in 60 months. Based on Trustee's calculations, the plan will complete in 76 months. 11 U.S.C. § 1322(d).

2. Debtor appears unable to make payments required under 11 U.S.C. § 1325(a)(6) as Debtor has not made a payment since October 22, 2013. Debtor is delinquent \$226.00 under the terms of the plan.

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

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

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

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

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

23. [12-32170](#)-C-13 FRANK LAGANA MOTION TO DISMISS CASE
NLE-2 Scott A. CoBen 12-9-13 [[82](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 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 Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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.

24. [12-31971](#)-C-13 MIKHAIL/OKSANA PROSHAK MOTION TO DISMISS CASE
NLE-1 Kristy A. Hernandez 12-9-13 [[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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case for the following reasons:

1. Debtor is in material default of section 5.03 of the plan, which requires Debtors plan to complete within 6 months of its stated term, not to exceed 60 months. Debtor's plan is proposed to complete in 36 months; however, based on Trustee's calculations it will complete in 48 months. This exceeds the maximum amount of time permitted under 11 U.S.C. § 1322(d).

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.

25. [13-23072](#)-C-13 MONICA RODRIGUEZ MOTION TO DISMISS CASE
NLE-1 John A. Tosney 12-9-13 [[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 Debtor, Debtor's Attorney, and Office of the United States Trustee on December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that Debtor is \$2,136.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,068.00 is due on December 25, 2013. Debtor has paid \$8,949.00 into the plan to date.

As Debtor has not provided an explanation for payment default, 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. [13-31374](#)-C-13 CHARLENE OJASCASTRO ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
12-3-13 [[49](#)]

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 December 2, 2013, 2013). The court docket reflects that the final installment payment was made on December 31, 2013.

The Order to Show Cause is discharged. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

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

Local Rule 9014-1(f)(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 November 26, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case because Debtors have not noticed all interested parties of the Chapter 13 plan and have not set a confirmation hearing date. The plan was filed on October 24, 2013. Debtor's failure to prosecute this case is causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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.

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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case because Debtors are \$350.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$350.00 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.

Pursuant to 11 U.S.C. § 1307(c)(4), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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.

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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case because Debtor is in material default of § 2.08(b)(4)(i) of the plan, that provides:

If the holder of a Class 1 claim gives Debtor and Trustee notice of a payment change in accordance with Fed. R. Bankr. P. 302.12(b), Debtor shall adjust the plan payment accordingly.

Debtor's Plan, § 2.08(b)(4)(i). On August 21, 2013, Class 1 creditor Wells Fargo Bank, N.A. filed a "Notice of Mortgage Payment Change." This increased the monthly contract installment payment to \$1,054.69, effective October 1, 2013. Debtor's current monthly plan payment is \$986.58, which is less than the current monthly contract installment. Trustee provided Debtor and Debtor's attorney with a courtesy notification of the increase in the monthly contract installment on October 4, 2013 (Exh. 1, Dkt. 25). Pursuant to 11 U.S.C. § 1307(c)(6), material default under the terms of a confirmed plan is sufficient cause to dismiss a Chapter 13 case.

Debtor has not responded to Trustee's Motion and remains in material default under the plan; therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

30. [13-32690](#)-C-13 CRAIG CARLSON MOTION TO DISMISS CASE
NLE-1 Jim G. Price 12-9-13 [[27](#)]

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 December 9, 2013, 2013. 28 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case for the following reasons:

1. Debtor is \$723.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$361.50.00 is due on December 25, 2013. Debtor has paid \$0.00 into the plan to date.
2. Debtor filed a plan on October 25, 2013 and served Notice of Debtor Filing Chapter 13 Plan on November 4, 2013. The Notice does not include a deadline for filing objections or the hearing day for confirmation of the plan. Debtor has not filed a Motion to Confirm and is not sufficiently prosecuting the bankruptcy.

Debtors' Opposition

Debtor states that it has mailed a cashier's check to the Trustee to remedy the delinquency and that he intends on filing an amended plan and setting it for confirmation before the hearing on Trustee's Motion to Dismiss.

To date, Debtors have not filed a Modified Plan and corresponding Motion to Confirm. Therefore, cause remains to dismiss Debtors' case.

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

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

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

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

31. [12-23792](#)-C-13 TREAVER BROOKS MOTION TO DISMISS CASE
NLE-1 John David Maxey 12-9-13 [[84](#)]

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 December 9, 2013. 28 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default of section 6.03 of the plan, which requires Debtors plan to complete within 6 months of its stated term, not to exceed 60 months. Based on Trustee's calculations Debtor's will complete in 104 months. This exceeds the maximum amount of time permitted under 11 U.S.C. § 1322(d). Furthermore, Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6) as Debtors re delinquent \$1,220.00 under the terms of the confirmed plan.

Debtors' Opposition

Debtor states he will be current on plan payments by the date of the hearing. Debtor also states he is negotiating an offer and compromise with the

Internal Revenue Service that will satisfy the IRS claim and resolve Trustee's concern with regard to the length of the plan term.

As it stands, Debtor remains in material default of his plan and; therefore, cause remains to dismiss Debtors' case under 11 U.S.C. § 1307(c)(6).

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.

32. [12-28693](#)-C-13 ISRAEL/ARACELI SANCHEZ MOTION TO DISMISS CASE
NLE-1 Mary Ellen Terranella 12-9-13 [[32](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 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 Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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.

33. [13-33993](#)-C-13 NATHAN POLLARD
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-6-13 [[16](#)]

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 December 2, 2013). The court docket does not reflect that the payment was made.

The Order to Show Cause is sustained. 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 fees having not been paid, the Order to Show Cause is sustained.

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 ordered, and the case
is dismissed.