

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 30, 2018 at 1:00 p.m.

1. [17-23400](#)-B-13 ANTHONY/LEETA HIGHTOWER ORDER TO SHOW CAUSE - FAILURE
Gerald B. Glazer TO PAY FEES
12-20-17 [[59](#)]

DEBTOR DISMISSED:

12/287/2017

JOINT DEBTOR DISMISSED:

12/28/2017

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

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

The court's decision is to not dismiss the case.

Chapter 13 Trustee moves to dismiss the case on grounds that the confirmed plan will take a total of 76 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 16 months longer than the proposed duration of 60 months. This is due to the fact that the confirmed plan understates the priority amount owed to the Internal Revenue Service.

Debtors filed a response stating that they have filed a modified plan that resolves the Trustee's concerns. The modified plan is scheduled for a confirmation hearing on February 20, 2018, at 1:00 p.m.

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

The court will enter an appropriate minute order.

3. [17-26714](#)-B-13 ELIZABETH GOMEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-15-17 [[39](#)]

DEBTOR DISMISSED: 12/20/2017

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

4. [17-27815](#)-B-13 ROBERT MOLDEN
Candace Y. Brooks

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-8-18 [[17](#)]

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due January 2, 2018. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

5. [17-25416](#)-B-13 RONALD SHAVER
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-19-17 [[41](#)]

DEBTOR DISMISSED: 01/06/2018

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

6. [17-27016](#)-B-13 BRYAN ULRICK AND BILLI JO ORDER TO SHOW CAUSE - FAILURE
 RICHMOND-ULRICK TO PAY FEES
 Kristy A. Hernandez 12-28-17 [[19](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$77.00 installment when due on December 26, 2017. While the delinquent installment was paid on December 28, 2017, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

7. [17-26618](#)-B-13 NANETTE CUSTADO
Joseph M. Canning

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-11-17 [[32](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on December 4, 2017. While the delinquent installment was paid on December 15, 2017, and a separate installment was paid on January 5, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' 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)(B) 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-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case.

The plan will take approximately 83 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 23 months longer than the proposed duration of 60 months. The Debtor has neither timely filed objections to claims nor timely filed a modified plan. The failure to file objections to claims or timely file a modified plan constitutes an unreasonable delay by the debtor that is prejudicial to creditors. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

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

The court will enter an appropriate minute order.

9. [17-26138](#)-B-13 TANESHIA WRAY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-19-17 [[30](#)]

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$76.00 due December 14, 2017. The court's docket reflects that the default was cured on December 19, 2018, and that an additional installment was paid on January 17, 2018. This payment constituted the final installment.

The court will enter an appropriate minute order.

10. [17-27940](#)-B-13 DUSTIN EATON
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-10-18 [[24](#)]

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due January 5, 2018. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

11. [17-27341](#)-B-13 DELORES GREY ORDER TO SHOW CAUSE - FAILURE
Thru #12 Richard L. Jare TO PAY FEES
1-10-18 [[36](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on January 5, 2018. While the delinquent installment was paid on January 22, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

12. [17-27341](#)-B-13 DELORES GREY ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
12-11-17 [[34](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments as stated at Item #11.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on December 6, 2017. The delinquent installment was paid on December 13, 2017.

The court will enter an appropriate minute order.

13. [17-26045](#)-B-13 WAYNE/DORIS ROSEMOND
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[37](#)]

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay \$77.00 due December 11, 2017. The court's docket reflects that the default was cured and the final installment was paid on December 29, 2017. The payment constituted the final installment.

The court also notes that a Notice of Conversion was filed on January 17, 2018, and that a Notice of Payment Due of \$25.00 was issued for the conversion from Chapter 13 to Chapter 7.

The court will enter an appropriate minute order.

14. [17-22648](#)-B-13 DONALD TRECO
[JPJ](#)-1 Richard A. Hall

MOTION TO DISMISS CASE
12-12-17 [[87](#)]

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

The court's decision is to dismiss the case.

Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of Debtor's first amended Chapter 13 plan was heard and sustained on October 17, 2017.

Debtor filed a response stating that he will file a modified plan to comply with Local Bankr. R. 3007-1(d). A review of the court docket shows that no modified plan has been filed.

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

The court will enter an appropriate minute order.

15. [17-27458](#)-B-13 CARMEN HALAMANDARIS
T. Mark O'Toole

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[18](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor/s to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on December 13, 2017. While the delinquent installment was paid on January 2, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

16. [17-26760](#)-B-13 INGRID EBELING
Kristy A. Hernandez

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[30](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on December 11, 2017. While the delinquent installment was paid on January 2, 2018, and a separate installment was paid on January 12, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

17. [17-26764](#)-B-13 CAROLYN JANE HEUSTESS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[29](#)]

DEBTOR DISMISSED: 12/20/2017

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' 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)(B) 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-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case.

First, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,569.11, which represents approximately 1 plan payment. By the time this matter is heard, an additional payment in the amount of \$2,569.11 will also be due. The Debtor has not made any plan payments since this petition was filed on November 6, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition from his job with the Santa Barbara Unified School District. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

While the Chapter 13 Trustee also the issue that the Debtor did not file a certificate of completion from an approved nonprofit budget and credit counseling agency, a review of the court's docket shows that one was filed on January 11, 2018.

For the first and second reasons stated above, cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

19. [17-25366](#)-B-13 RAYMOND CORREA
Taras Kurta

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[48](#)]

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due December 12, 2017. The court's docket reflects that the default was cured on January 8, 2018. The payment constituted the final installment.

The court will enter an appropriate minute order.

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

The court's decision is to not dismiss the case.

Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Debtor's motion to confirm plan filed August 25, 2017, was denied on October 21, 2017.

Debtor filed a response stating that she filed an amended plan on December 15, 2017. The amended plan is scheduled for a confirmation hearing on February 6, 2018, at 1:00 p.m.

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

The court will enter an appropriate minute order.

21. [17-27471](#)-B-13 RICHARD/IVONNE SCHAFER
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-18-17 [[27](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor/s to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on December 13, 2017. While the delinquent installment was paid on January 11, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

22. [17-27373](#)-B-13 TAMURI RICHARDSON ORDER TO SHOW CAUSE - FAILURE
Thru #24 Pro Se TO PAY FEES
12-12-17 [[19](#)]

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

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed for reasons stated at Item #24.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due December 7, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

23. [17-27373](#)-B-13 TAMURI RICHARDSON ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
1-11-18 [[72](#)]

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

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed for reasons stated at Item 24.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due January 8, 2018. This is the second time an installment was not received by its due date. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

24. [17-27373](#)-B-13 TAMURI RICHARDSON MOTION TO DISMISS CASE
JPJ-2 Pro Se 1-2-18 [[63](#)]

Final Ruling: No appearance at the January 30, 2018, hearing is required.

The Trustee's Motion to Dismiss Case has been set for hearing on the 28-days' 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)(B) 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-BuTrk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to dismiss the case.

First, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Second, the Debtor did not appear at the meeting of creditors set for December 21, 2017, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$612.77 through December 25, 2017, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$612.77 will also be due. The Debtor has not made any plan payments since the petition was filed on November 7, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Fourth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fifth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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

The court will enter an appropriate minute order.

25. [17-26480](#)-B-13 TORREAN TYUS
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-2-18 [[53](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on December 28, 2017. While the delinquent installment was paid on January 26, 2018, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

26. [13-34188](#)-B-13 HENRY/HAZEL CASTILLO MOTION TO DISMISS CASE
[JPJ](#)-2 Matthew J. DeCaminada 12-7-17 [[60](#)]

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

The court's decision is to dismiss the case.

Chapter 13 Trustee moves to dismiss the case on grounds that the confirmed plan will take a total of 100 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 40 months longer than the proposed duration of 60 months.

Debtors filed a response stating that they will file a modified plan to comply with Local Bankr. R. 3007-1(d). A review of the court docket shows that no modified plan has been filed.

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

The court will enter an appropriate minute order.

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

The matter will be determined at the scheduled hearing.

Chapter 13 Trustee moves to dismiss the case on grounds that the confirmed plan will take a total of 74 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 14 months longer than the proposed duration of 60 months. This is due to the fact that the confirmed plan understates the pre-petition mortgage arrears owed to Fay Servicing, LLC.

Debtors filed a response stating that they will pay \$1,337.82 to the Chapter 13 Trustee by January 16, 2018, to make up for the difference in pre-petition arrears owed to Fay Servicing, LLC.

However, Trustee filed a reply stating that the proposed payment amount by the Debtor does not yet include the Trustee's fee and increase to the Trustee's fee since the petition was filed. The Trustee calculates that an additional payment must be for no less than \$2,575.00. Alternatively, monthly plan payments must be increased to \$1,001.00 beginning January 25, 2018. The Debtor may elect either action and no other. Otherwise, the motion will be granted and the case dismissed.

The matter will be determined at the scheduled hearing.

Tentative Ruling: The motion to confirm plan was continued from January 23, 2018, to allow Debtor additional time to become current on plan payments by January 25, 2018. The Motion to Confirm the Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

First, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. This problem was also raised and sustained on December 12, 2017. Although the Trustee stated at the hearing in open court that it has received the Checklist, it has not received the Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,590.00, which represents approximately .22 plan payments. This matter was continued to January 30, 2018, to allow the Debtor to become current by January 25, 2018, by paying the default payment and the payment due for January 25, 2018. If the Debtor did not become current by January 25, 2018, the plan will not be confirmed. The court would find the Debtor unable to make the plan payments proposed and unable to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Trustee requested at the meeting of creditors and in an objection to confirmation of plan that the Debtor provide the written declarations from her sisters and brother regarding their ability and willingness to contribute to the Debtor over the life of her plan. Written declarations were filed on January 15, 2018, by Debtor's sisters and brother stating their ability and willingness to contribute to the Debtor over the life of her plan.

If the first and second issues stated above are not resolved, the amended plan would not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and would not be confirmed.

The court will enter an appropriate minute order.

29. [13-20816](#)-B-13 MARTIN WEBER
[17-2054](#) DSB-1
WEBER V. DEUTSCHE BANK
NATIONAL TRUST COMPANY ET AL

CONTINUED MOTION TO COMPEL,
MOTION FOR SANCTIONS AND/OR
MOTION TO EXTEND TIME
1-19-18 [[27](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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.

The court's decision is to grant the motion.

Deutsche Bank National Trust Company, as Trustee for the Certificateholders of Merrill Lynch Mortgage Investors Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-MLNI and Nationstar Mortgage LLC ("Defendants") seek to compel debtor Martin Weber ("Plaintiff") to (1) adequately and completely respond to written discovery within 15 days of the date of the court's order, (2) produce all documents in response to Defendants' written discovery within 15 days of the date of the court's order, (3) appear for deposition after production of discovery responses and documents at a date mutually agreeable to the parties but no later than 30 days from the date of the court's order, and (4) pay Defendants' costs and attorney's fees in the amount of \$2,250.00. Defendants separately request that the court extend the close of discovery deadline and pre-trial conference by no less than 60 days.

Defendants' propounded written discovery included a request for production of documents, interrogatories, and request for admission. According the Defendants', Plaintiff submitted deficient responses with little or no substantive response, failed and refused to produce any documents at all, and failed to cooperate with the setting of his deposition.

On November 17, 2017, Defendants' counsel emailed Plaintiff's counsel requesting that the parties meet and confer with respect to Plaintiff's improper responses in order to reach a resolution of the dispute. Defendants' counsel also requested to set Plaintiff's deposition. Defendants did not receive a response to the meet and confer and deposition requests. Instead, the parties stipulated, and the court granted, an order extending the close of discovery.

On December 26, 2017, Defendants' counsel emailed Plaintiff's counsel again requesting a time to meet and confer, and for dates for Plaintiff's deposition. Defendants did not receive a response.

On January 3, 2018, Defendants' counsel emailed Plaintiff's counsel reminding that the court had approved the stipulation to extend the close of discovery, and again requesting a time to meet and confer, and for dates for Plaintiff's deposition. Defendants did not receive a response.

On January 5, 2018, Defendants' counsel emailed Plaintiff's counsel one last time requesting Plaintiff to participate in the meet and confer process or else Defendants would be required to move to compel. Defendants did not receive a response.

No opposition has been filed by Plaintiff's counsel.

Discussion

Fed. R. Civ. P. 37(a)(3)(B)(iii) & (iv), as made applicable here by Fed. R. Bankr. P. 7037, permit the party propounding discovery to move to compel responses to interrogatories and a request for documents, respectively. Fed. R. Civ. P. 36(a)(6), as made applicable by Fed. R. Bankr. P. 7036, permits a party serving a request for admissions to move for a determination of the sufficiency of an answer or objection

and, if either are determined to be insufficient, permits the court to order the matter admitted or an amended answer served.

A court may compel discovery after the moving party has attempted in good faith to obtain such without court action. Fed. R. Civ. P. 37(a); Fed. R. Bankr. P. 7037. The movant must show that it conferred or attempted to confer in good faith. In order to comply with Fed. R. Civ. P. 37, the movant must accurately and specifically certify with whom, where, how, and when the movant attempted to personally resolve the discovery dispute. *Shuffle Master v. Progressive Games*, 170 F.R.D. 166, 170 (D. Nev. 1996). The movant must also certify that it has, in good faith, conferred or attempted to confer to resolve the discovery dispute without judicial intervention. *Id.* at 171.

Defendants have complied with the certification requirement because the declaration and exhibits in support of their motion to compel include the specific details of their attempts at communication with the Plaintiff. The Defendants have also satisfied the performance requirement by attempting to confer with the Plaintiff. Thus, the Defendants are entitled to an order: **(1)** compelling adequate, complete, and amended responses to the Defendants' document requests, interrogatories, and request for admissions within 14 days of entry of the court's order; and, further **(2)** compelling Plaintiff to appear for a deposition no later than 30 days from entry of the court's order.

The court has reviewed Plaintiff's so-called responses to Defendants' document requests, Dkt. 27 at Ex. A, interrogatories, *id.* at Ex. B, and request for admissions, *id.* at Ex. C. Those purported responses consist exclusively of repetitive boilerplate objections to the discovery requested. To a large extent, the objections are nonsensical, improperly asserted, or otherwise not applicable. And in that regard, Plaintiff's responses to Defendants' discovery requests are all insufficient. And frankly, Plaintiff's responses are some of the worse discovery responses this court has encountered to date.

Plaintiff has made significant allegations against Defendants. Plaintiff seeks substantial damages from Defendants. Therefore, Plaintiff may not (and will not) evade or avoid discovery.

Plaintiff will be ordered to respond to Defendants' discovery requests to the fullest extent possible. Therefore, Plaintiff will be ordered to provide amended responses to Defendant's document request, interrogatories, and request for admissions within the parameters set forth hereinabove.

Attorney-client and work-product privilege objections asserted in response to the Defendants' discovery requests are not sufficient due to the absence of a privilege log accompanying the objections. See *Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1132, 1149 (9th Cir. 2005) ("We hold that boilerplate objections or blanket refusals inserted into a response to a Rule 34 request for production of documents are insufficient to assert a privilege. However, we also reject a per se waiver rule that deems a privilege waived if a privilege log is not produced within Rule 34's 30-day time limit."). Having considered *Burlington's* factors, *id.*, Plaintiff will be given an opportunity to produce a privilege log with its amended responses if it intends to object to production of any document or other information on the basis of any privilege. That privilege log must comply with Fed. R. Civ. P. 26(b)(5); Fed. R. Bankr. P. 7026. The following decisions offer guidance on the contents of an acceptable privilege log that meets Rule 26(b)(5) standards. *In re Daily*, 2017 WL 4480737, *4 fn. 4 (Bankr. D. Mont. 2017) and *Club Level, Inc. v. City of Wenatchee*, 618 Fed. Appx. 316, 319 (9th Cir. 2015). Plaintiff is strongly encouraged to review those decisions. Failure to serve a privilege with amended responses will result in a waiver of the privilege.

Burdensome, broad, vague, ambiguous, confusing, and the like objections asserted in response to the document request, interrogatories, and request for admissions are also overruled. As are all other objections. Therefore, subject only to a proper claim of privilege, Plaintiff is ordered to produce all documents in his possession, custody, and control responsive to Defendants' request. That includes any and all documents

that plaintiff has access to, directly or indirectly through others. That also includes any and all bank and financial records regarding any account that has been put in issue by Plaintiff's allegations none of which are privileged. That includes all documents requested even if those documents are or may be in Defendants' possession. The fact that Defendants may possess documents or the information requested is not an excuse to refuse production of requested documents or information.

Plaintiff is also ordered to provide amended answers to all interrogatories and requests for admissions. As to the request for admissions, Plaintiff's amended response shall confirm with Fed. R. Civ. P. 36(a)(4); Fed. R. Bankr. P. 7036.

Plaintiff has had sufficient time to properly respond to Defendants' discovery requests, including extensions, and therefore shall not be granted any further extension of the deadlines imposed herein. Plaintiff shall also not be granted any additional extension for his deposition. The parties are urged to set Plaintiff's deposition at a mutually convenient location, date, and time. However, if Plaintiff and/or his attorney(s) fail or refuse to respond to a request to set that deposition (or refuse to set it) in order to meet the deadlines imposed herein, Defendants may unilaterally set Plaintiff's deposition at a location (subject to applicable geographical limitations in the federal rules) and on a date and time convenient to the Defendants and their attorneys and Plaintiff shall appear at the deposition as set.

Plaintiff is advised that failure to comply with any aspect of this order will result in additional sanctions that may include, but are not necessarily limited to, dismissal and contempt. See Fed. R. Civ. P. 34(b)(2)(A); Fed. R. Bankr. P. 7034.

Finally, "the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion . . . to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Bankr. P. 7037. This is also authorized by the court's scheduling order. See Dkt. 13 at 2:17-3:17. This remedy, however, is limited only to expenses incurred in making the motion.

The Defendants are seeking a total of \$2,250.00 in attorney's fees as expenses incurred in the bringing of this motion. The court concludes that the requested fees and expenses are reasonable and necessary for the preparation and prosecution of this motion. Therefore, the court will award Defendants attorney's fees and expenses totaling \$2,250.00. **The Plaintiff (and not the Plaintiff's attorney) shall pay these attorney's fees and expenses to Defendants' counsel no later than 14 days after the entry of the court's order and shall file a certification of payment with the court within 2 days after payment.** See Fed. R. Civ. P. 37(a)(5)(A); Fed. R. Bankr. P. 7037 (permitting court to order party or attorney to pay fees).

Finally, the close of discovery deadline and pre-trial conference are extended by 60 days.

The motion is granted.

The court will enter an appropriate minute order.