

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

February 19, 2014 at 10:00 a.m.

1. [11-48305](#)-C-13 JOHN/DARLENE DOERR MOTION TO DISMISS CASE
TSB-1 Peter G. Macaluso 1-22-14 [[179](#)]

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 January 22, 2014. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Dismiss. 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's Motion to Confirm was heard and denied on December 10, 2013. Trustee requests the case be dismissed unless Debtors file and serve an amended plan and motion to confirm an amended plan no later than February 5, 2014, or Debtors file a response no later than February 5, 2014 explaining the reason for the delay and why it was reasonable.

Debtors' Response, filed 02/04/2014 (Dkt. 190)

Debtors response and state that they have filed, set, and served a Motion to Confirm for March 11, 2014. Debtors are current pursuant to the proposed plan and are prosecuting their case.

Debtors have provided an adequate response to Trustee's concerns and are sufficiently prosecuting their case. The court's docket reflects that an amended plan was filed January 27, 2014 with a Motion to Confirm. Cause does not exist to dismiss Debtors' case and the Motion to Dismiss is denied without prejudice.

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

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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.

2. [11-48511](#)-C-13 DAVID/LISA STOREY MOTION TO DISMISS CASE
DPC-2 Brandon Scott Johnston 1-8-14 [57]

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 January 8, 2014. 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 with respect to the terms of the confirmed plan. Based on Trustee's calculations, Debtors are delinquent \$4,868.in plan payments. Pursuant to 11 U.S.C. § 1307(c)(6), material default by a debtor with respect to a term of a confirmed plan is sufficient cause for the court to dismiss a case.

Debtors' Opposition, filed 02/05/2014 (Dkt. 61)

Debtors' state that their originally confirmed plan has become untenable due to a change in income. Debtors plan to have filed a Modified Plan and Motion to Confirm prior to February 19, 2014.

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

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 and Office of the United States Trustee on January 22, 2014. 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 \$850.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$850.00 is due on January 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor has not provided Trustee with proof of income for the 60 days preceding filing of bankruptcy. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e)(2)(A)(I).
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 has not provided Trustee with proof of Social Security Numbers to establish Debtor's identity. 11 U.S.C. § 521(h)(2).

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

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

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

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

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

4. [13-34922](#)-C-13 ANGELICA IRWIN ORDER TO SHOW CAUSE - FAILURE
Jared A. Day TO PAY FEES
12-27-13 [[17](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on December 23, 2013). The court docket reflects that on December 27, 2013, Debtor paid the fees upon which the Order to Show Cause was based.

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.

5. [13-36129](#)-C-13 ALVIN TABIOS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-3-14 [[26](#)]

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 January 29, 2014). The court docket reflects the installment fee has not been paid.

The court's tentative decision is to sustain the Order to Show Cause 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 fees not having been paid, the Order to Show Cause is sustained 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 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.

6. [13-31530](#)-C-13 SHOMARI/MONIQUE TURNER
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-6-14 [[30](#)]

Final Ruling: The court issued an order to show cause based on Debtors' failure to pay the required fees in this case (\$41.00 due on January 2, 2014). The court docket reflects that on January 10, 2014, the Debtors paid the final installment fee payment.

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 January 22, 2014. 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 \$3,600.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,200.00 is due on January 25, 2014. Debtor has paid \$1,200.00 into the plan to date.

Debtors' Opposition

Debtor asserts that she made her first payment on January 25, 2014 and has paid the required fees per a debit card arrangement with the Trustee's office. Debtor recognizes that since this arrangement was made, no fees have reached the Trustee and attributes this to IT difficulties. Debtor predicts this matter will be resolved before the stated hearing date.

To date, the issue concerning Debtor's missing plan payments remains unresolved. If, at the hearing on the Motion, Debtor and Trustee have resolved the matter, the court is amenable to adjusting the tentative ruling. Currently, cause remains to dismiss Debtors' case for material default 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

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Dismiss is granted and the case is dismissed.

8. [13-34338](#)-C-13 JESSICA RAMSEY ORDER TO SHOW CAUSE - FAILURE
C. Anthony Hughes TO PAY FEES
1-13-14 [[33](#)]

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 January 7, 2014). The court docket reflects that on January 22, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

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 January 29, 2014. 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 Debtor's Bankruptcy Case Debtor is \$9,635.00 delinquent under the terms of the plan confirmed on March 24, 2013. Debtor has paid \$83,520.00 into the plan to date. Pursuant to 11 U.S.C. § 1307(c)(6), material default by a debtor with respect to a term of a confirmed plan is sufficient cause for the court to dismiss a case.

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.

10. [13-31852](#)-C-13 FRED/EILEEN LIGHT
Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-13-14 [[28](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on January 8, 2014). The court docket reflects that on February 2, 2014, the Debtors paid the final installment fee payment.

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 January 17, 2014. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$4,800 delinquent under the terms of the confirmed plan. 11 U.S.C. § 1325(c)(6). To date, Debtor has paid a total of \$19,200.00, with the last payment received on June 20, 2013. Debtor is in material default of the plan. 11 U.S.C. § 1307(c)(6).

Debtor's Response, filed 02/07/2014 (Dkt. 59)

Debtor filed a statement not opposing the Motion by the Chapter 13 Trustee to dismiss the case pursuant to 11 U.S.C. § 1307(c).

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

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

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

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

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

12. [13-30454](#)-C-13 LEROY THOMAS CONTINUED MOTION TO CONFIRM
SNS-2 Stephen M. Reynolds PLAN
Thru #13 12-4-13 [[52](#)]

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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. Fort-two days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Plan.

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

Prior Hearing

The court heard Debtor's Motion to Confirm at a hearing held on January 28, 2014. The court continued the hearing on this Motion to February 19, 2014, to be heard simultaneously with a pending Motion to Dismiss. Both Motions concern issues with Debtor's delinquency.

Opposition to Motion to Confirm

The Chapter 13 Trustee opposes confirmation of Debtor's plan because Debtor is \$674.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$337.00 is due on January 25, 2013. Debtor has paid \$531.20 into the plan to date.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13. [13-30454](#)-C-13 LEROY THOMAS MOTION TO DISMISS CASE
TSB-3 Stephen M. Reynolds 1-22-14 [[59](#)]

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 January 22, 2014. 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 Debtor is \$674.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$337.00 is due on January 25, 2014. Debtor has paid \$531.00 into the plan to date.

Debtors' Opposition

Debtor proposes to cure the plan payment delinquency on or before the scheduled hearing date of February 19, 2014.

To date, Debtor has not presented evidence that the delinquency has been cured. 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

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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.

14. [13-33054](#)-C-13 MARIA VEGAS MOTION TO DISMISS CASE
TSB-1 Timothy J. Walsh 2-5-14 [[34](#)]

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 February 5, 2014. Fourteen 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 \$4,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,000.00 is due on February 25, 2014. Debtor has paid \$8,000.00 into the plan to date.
2. The case was filed on October 7, 2013 and Debtor has yet to confirm a plan. The Trustee's Objection to Confirmation (NLE-1) was heard and sustained on December 10, 2013 and Debtor has failed to amend the Plan and set a confirmation hearing date. There is unreasonable delay in filing a new plan.

A review of the case docket shows that Debtor filed an amended plan and set a hearing on the Motion to Confirm the plan for April 1, 2014. While Debtor has resolved this portion of the Trustee's Motion, Debtor has not presented evidence that plan payments are also current; therefore, 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.

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 and Office of the United States Trustee on January 9, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor has engaged in unreasonable delay that is prejudicial to creditors. Debtor has not filed a Chapter 13 plan and has not filed the following documents:

1. Form 22C
2. Schedules(s): A-J
3. Statement of Financial Affairs
4. Statistical Summary
5. Summary of Schedules
6. Attorney's Disclosure Statement

The docket reflects that a plan and missing documents remain unfiled. Cause exists to dismiss this case. The motion is granted and the case is dismissed. The court shall issue a minute order substantially in the following form holding that:

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

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

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

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 February 3, 2014. Fourteen 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 held on January 30, 2014. The Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).
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 is \$224.67 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$224.67 is due on February 25, 2014. Debtor has paid \$0.00 into the plan to date.

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.

17. [13-35864](#)-C-13 CHARLES BEYER CONTINUED MOTION FOR THE
UND-1 Ulric N. Duverney APPOINTMENT OF A GUARDIAN AD
LITEM
1-6-14 [[22](#)]

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 Chapter 13 Trustee and Office of the United States Trustee on January 3, 2014. 42 days' notice is required. That requirement was met.

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

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

Prior Hearing

A hearing on the relief requested was held February 4, 2014. At that hearing the court requested further explanation of the grounds justifying the appointment of a Guardian ad Litem. The court continued the hearing to February 19, 2014 for the Motion to be heard concurrently with Trustee's Motion to Dismiss.

The court is tentatively prepared to dismiss Debtor's case based on the Trustee's Motion to Dismiss. If the court's tentative decision to dismiss

Debtor's case becomes final at the hearing, then this current Motion will be denied as moot.

Relief Requested and Grounds Stated

Federal Rule of Bankruptcy Procedure 9013(which is similar to Fed. R. Civ. P. 7(b)) requires that the motion itself state both the grounds upon which the relief is based and the relief with particularity. The Motion simply states:

Debtor CHARLES BEYER, with the assistance of his "next friend" Deborah A. Allen, hereby moves this court for an order appointing a Guardian ad litem for debtor pursuant to Federal Rule of Bankruptcy Procedure 1004.1.

This motion is made on the grounds that the debtor is incapacitated as he is afflicted with dementia and would not be capable of pursuing this chapter 13 without the assistance of Guardian ad litem.

Debtor then engages in a brief discussion of why jurisdiction is proper in this matter. From reading the Motion, the court has only a vague idea of why Debtor is requesting that the court appoint a Guardian Ad Litem for his bankruptcy case. Debtor does not cite to the evidence provided, namely, the Declaration of Deborah A. Allen (Dckt. No. 25) in support of Debtor's factual contention that Debtor has dementia and would not be capable of pursuing the Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1004.1.

The court has no way to determine, from the Motion, the facts on which Debtor requests that relief be accorded. It seems that the court is expected to read the Memorandum of Points of Authorities to determine the bases for this motion. Debtor is essentially asking the court to treat the points and authorities as the "motion."

Debtor is asking that the court accept a combined motion and points and authorities ("Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Bankr. P. 9013), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Debtor. It is not, however, for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movants.

Background per Memorandum of Points and Authorities

The court is forced to look to the body of Debtor's Memodrandum of Points and Authorities to ascertain the relevant facts of the motion. Debtor states that on December 19, 2013, a Chapter 13 petition filed on behalf of Debtor Charles Beyer ("Beyer") by his wife, Deborah Allen ("Allen"), as his "next friend."

In 2007, Beyer took out a reverse mortgage and pledged the family residence as collateral. Before it was placed in the family trust, the property was held as Beyer's separate property. The reverse mortgage required the borrower to maintain insurance on the property and pay the real estate taxes. Beyer breached the agreement by not paying the property taxes, and at

times allowed the property insurance to lapse. The reverse mortgage company (Financial Freedom, a division of OneWest Bank, FSB) deemed the non-payment to be a default of the reverse mortgage contract and began foreclosure proceedings. A trustee's sale was scheduled to take place on December 20, 2013.

The Motion states that due to his mental illness, Beyer is unable to prosecute this matter on his own. Beyer's wife, Allen, testifies in her declaration that her husband is afflicted with dementia, and due to his condition, Beyer cannot drive and requires assistance in getting dressed, taking his medication, attending his doctor's appointments, and undertaking normal day-to-day activities. ¶ 5, Declaration of Deborah Allen in Support of Appointment of Guardian Ad Litem, Dckt. 24 at 2. Allen states that Beyer has extremely short term memory, and has become extremely paranoid, and that his condition has deteriorated significantly. *Id.* at 2-3.

Allen's Declaration points to an unauthenticated Doctor's Note, apparently from a physician from the Sutter Medical Foundation (whose name is illegible), and what appears to be an Abstract of the Charles Beyer and Deborah Allen Family Trust, which were both attached to Allen's declaration, and not filed as a separate item on the case docket. The parties are advised that Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents require that the motion, points and authorities, each declaration, and the exhibits document to be filed as separate electronic documents. The purported "Doctor's Note" states that,

Patient has Frontal Lobe Dementia can not make Decisions on his own

Doctor's Note, attached to Declaration of Deborah Allen, Dckt. No. 24 at 6.

Movant claims that the Abstract of Trust is a key item of evidence that figures into the determination that Allen should be appointed as a guardian. The Motion states that the fact that Breyer and Allen had a revocable trust prepared for them in May 28, 2008, in which Allen and Bryer were appointed co-trustees, and Allen was appointed as Breyer's attorney in fact, indicates that Breyer placed his trust and reliance in Allen in executing these documents.

Trustee's Opposition

The Chapter 13 Trustee opposes the Motion for the Appointment of Guardian on the following grounds:

1. The Motion was filed 14 days after the petition. Federal Rule of Bankruptcy Procedure 9014(c) provides that Federal Rule of Bankruptcy Procedure 7017 applies to contested matters. Federal Rule of Civil Procedure 7017 applies to contested matters. Federal Rule of Civil Procedure 17(a)(3) allows for a reasonable time for ratification of the joinder of substitution before dismissal of a proceeding, when not pursued by the real party in interest.

The Petition was filed with no additional documents on December 19, 2013, and was signed by the moving party. Because there were no additional documents filed, the Trustee is uncertain if the present motion was filed within a reasonable time, as the petition lacked the Debtor's signature and the person who had signed the petition had no

explicit authority to do so.

2. Allen is seeking appointment as guardian litem. Trustee argues that the judicial appointment of Allen, who does appear to be an attorney, may not be advisable but the appointment of the movant as next friend may be. *In re Meyers*, 350 BR 760 (Bankr. N.D. OH 2006). California law normally accords a guardian ad litem extensive powers, and may require that a guardian ad litem in civil proceedings be represented by an attorney, or be an attorney. California Judicial Council Form CIV-010. Moving counsel has indicated that he is the counsel for the Debtor. (*In re Meyers*, *infra* at 764, holding that no distinction may exist between guardian ad litem and next friend).
3. Trustee believes that there are three particulars that Debtor has not addressed in his Motion that must be addressed before the Motion is granted: (1.) Movant has not addressed how long they believed the incapacity existed; (2.) Movant refers to a question regarding whether they are currently married to the debtor, which may need to be addressed further; (3.) Movant refers to a trust and durable power of attorney, which appears to have their estates settled and an authority of a successor trustee of Debtor's.

On the last point, Trustee asserts that it is not clear whether the success or trustee has been consulted, whether the bankruptcy can accomplish its goal of retaining the property, and cure the arrears if Debtor remains in default, and how the default occurred to begin with.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1004.1 allows "a representative, including a general guardian, committee, conservator, or similar fiduciary," to file a voluntary petition on behalf of an incompetent person.

Federal Rule of Bankruptcy Procedure 1004.1 further states:

If an infant or incompetent person has a representative, including a general guardian, committee, conservator, or similar fiduciary, the representative may file a voluntary petition on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may file a voluntary petition by next friend or guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person who is a debtor and is not otherwise represented or shall make any other order to protect the infant or incompetent debtor.

Rule 1004.1 is patterned after Federal Rule of Civil Procedure 17(c), which applies to adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7017. ("The following representatives may sue or defend on behalf of a minor or an incompetent person: (A) a general guardian; (B) a committee; (C) a conservator; or (D) a like fiduciary. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person."). Fed. R. Civ. P. 17(c).

The Motion states that this instant matter is a "classic situation where a guardian ad litem would be necessary," but does not provide competent

evidence on when Breyer was diagnosed with the condition, and when the incapacity began and Breyer's current relationship with Allen (if they are still married). The documents connected to Breyer and Allen's self-settled trust would only be indicative of Breyer and Allen's relationship of confidence and trust, if the trust was executed before Breyer's decision-making capabilities were compromised by his condition.

More importantly, the Motion to Appoint a Guardian Ad Litem was not concurrently filed with Breyer's bankruptcy petition, which is troubling to the court on two fronts: (1.) Breyer may not have had the capacity to certify that the information provided in his petition and schedules are correct; and (2.) Allen did not have express authority to sign the petition as Breyer's next friend. The voluntary Chapter 13 petition was filed on December 18, 2013 that was signed by both Breyer, and Allen as the "next friend." Dckt. No. 1 at 3. There is not additional documentation, explaining Breyer's condition or evincing Allen's intent to be appointed as Debtor's guardian ad litem. The parties did not file any paperwork showing that Allen was authorized to sign the bankruptcy petition on behalf of Breyer.

The instant motion was filed on January 6, 2014, more than two weeks after the petition was filed. The Bankruptcy Code does not prescribe a time for when the guardian ad litem should file the bankruptcy petition for the person who does not have the capacity to maintain the action. As Trustee points out, one bankruptcy court has ruled that such a motion must be made at the time of the petition. *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012). In that case, the bankruptcy court cited concerns about the potential for abuse that exists with regard to motions to appoint a next friend under Fed. R. Bankr.P. 1004.1, nothing the high standard required by conservatorship statutes in Oregon to establish that guardians are dedicated to the best interests of the debtor. The court determined that a motion under Rule 1004.1 be accompanied by, among other things: a copy of the power of attorney giving movant authority to act for the debtor; a comprehensive declarations from the person seeking appointment; and that notice be given to all creditors, the UST, relatives, governmental entities disbursing funds to the debtor, etc. *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012).

Lastly, it is unclear why Breyer and Allen chose to file a petition seeking an appointment of Allen as a guardian ad litem, and not "next friend" under Federal Rule of Civil Procedure 17. Allen seems to have assumed the designation of "next friend," according to the bankruptcy petition and Motion, but requests that she be appointed guardian ad litem of Breyer instead.

CONCLUSION

The court is not necessarily opposed to the motion, but will require more than the letter from the debtor's physician regarding Beyer's ability to conduct his own financial affairs and Beyer's Power of Attorney to grant the motion. It is uncertain that Allen has comprehensive knowledge of Beyer's financial situation, and is committed to Beyer's best interests throughout the bankruptcy process.

Although this court will not require that the parties follow these specific procedures outlined in the persuasive case of *In re Lane*, BR 12-36873-ELP7, 2012 WL 5296122 (Bankr. D. Or. Oct. 25, 2012), the court will require at a minimum, a more in-depth explanation of when Breyer was afflicted by the condition, the circumstances in which the petition and bankruptcy

paperwork was prepared—and who signed it, and the exact status of Breyer's current relationship with Allen. Until these matters are addressed, the court cannot appoint Deborah Allen as the guardian ad litem of the Charles Beyer.

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 for the Appointment of a Guardian Ad Litem filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for the Appointment of a Guardian Ad Litem is denied without prejudice.

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 Chapter 13 Trustee and Office of the United States Trustee on January 3, 2014. 42 days' notice is required. That requirement was met.

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

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

Prior Hearing

A hearing on the relief requested was held February 4, 2014. At that hearing the court requested further explanation of the grounds justifying the appointment of a Guardian ad Litem, the determination of which is pertinent to the court's decision on the present Motion. The court continued the hearing to February 19, 2014 for the Motion to be heard concurrently with Trustee's Motion to Dismiss.

The court is tentatively prepared to dismiss Debtor's case based on the Trustee's Motion to Dismiss. If the court's tentative decision to dismiss Debtor's case becomes final at the hearing, then this current Motion will be denied as moot.

Motion

Debtor, Charles Beyer, with the assistance of his "next friend" Deborah A. Allen, moves this court for an order pursuant to 11 U.S.C. § 109(h)(4) to excuse Debtor from having to take the prepetition credit counseling class. Debtor makes the motion on the grounds that Debtor is incapacitated, as he is afflicted with dementia and would be unable to complete the program.

Trustee's Opposition

Trustee objects on the basis that the movant lacks standing to pursue the present motion, unless the court grants the other pending motion of Debtor, the

Motion for Appointment, Dckt. No. 22.

As discussed in the court's ruling on Debtor's Motion for the Appointment of a Guardian Ad Litem, UND-1, the court will not appoint Allen as the guardian ad litem of Beyer until certain evidentiary issues are resolved. As such, Allen will not have standing to pursue this instant motion under U.S. Const. art. III, § 2, as Allen is not the relevant party affected by the events of this case. The court will deny this motion without prejudice.

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

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

The Motion for the Appointment of a Guardian Ad Litem filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Waive the Credit Counseling Requirement is denied without prejudice.

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 January 22, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case based on the following:

1. Debtor's case was filed as a Chapter 13 on September 28, 2011 and Debtor paid in \$22,850, despite no plan ever being confirmed. Debtor converted to Chapter 7, on August 10, 2012, after eleven (11) months into the Chapter 13 and then reconverted to Chapter 13 on October 18, 2013, the 25th month since the petition was filed.

The pending plan has no additional provisions and calls for 55 months of payments of \$350.00, commencing the month after the order for relief under Chapter 13, which would total \$19,250.

Trustee believes, based on the plan, that the effective date of the plan is confirmation; however, payments are being measured from October 2011. In the event payments are measured from the latest reconversion date, the plan calls for 55 months of payments, which arguably extends the plan past 60 months. 11 U.S.C. § 1322(d).

2. All sums required by the plan not have been paid. 11 U.S.C. § 1325(a)(2). Since the date of reconversion, Debtor has made no payments into her plan.

Debtor appears either unable or unwilling to make the payments. Before Debtor's case was originally converted from Chapter 13 to Chapter 7, a total of ten payments had come due under the plan. During the pendency of the plan, Debtor made a total of eight payments and was delinquent when the case was converted to Chapter 7.

3. Debtor has not provided Trustee with 60 days of employer payment

advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521 (e) (2) (A); FRBP 4002(b) (3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e) (2) (A) (i).

Debtor claims she earns some income from operation of a business. Trustee requests Debtor be required to supply a monthly profit and loss statement for both her business and her non-filing spouse's business.

4. 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).

Although Debtor is a stay-at-home mother, her non-filing spouse is the primary earner and the source of support for Debtor's proposed plan. Trustee requests that Debtor be required to provide both business and personal tax returns for the non-filing spouse and his businesses for 2011-2012.

Debtors' Opposition, filed 02/04/14

Debtor provides the following response to Trustee's Motion:

1. Debtor's new plan provides for payments that will end in August 2016, the 60th month from the original petition date in this case.
2. Debtor states that under the first amended plan filed prior to the hearing on Trustee's Motion to Dismiss, Debtor is not delinquent in her plan payments and creditors will receive the same amount as if Debtor has begun making monthly payments in November 2013.

Debtor's new plan provides for payments of \$350.00 per month beginning January 2014 and continuing through August 2016. Debtor has paid her first plan payment of \$350 for January 2014. In addition, Debtor will pay \$525 per month during July and August 2014 and 2015, which will compensate for the \$350 payments of November and December 2013.

3. Debtor states she has provided the court and Trustee with extensive verification of household income. In connection with her Motion to Reconvert the case to Chapter 13, she submitted a summary sheet of her household income and six months of her husband's pay stubs dating from March 2013 through August 2013.

Debtor argues that 11 U.S.C. § 348 provides that the conversion of a case does not alter the original date of filing, except in certain unrelated circumstances.

However, Debtor provided the Trustee with the income verification set forth in the Motion to Reconvert and attended a reset meeting of creditors, held January 2, 2014, to discuss her proposed Plan with the Trustee.

4. As for the tax documents, for many years, Debtor has not earned sufficient income requiring her to file a tax return. She testified regarding this at her original meeting of creditors in 2011 and her Chapter 7 meeting of creditors in 2012. Debtor anticipated this statement regarding her tax filing status would be sufficient at the reset meeting of creditors, held January 2, 2014. Instead, Trustee has requested that Debtor file a written statement regarding her tax status. Debtor has prepared and signed a written statement and filed it with the court.

The court is not persuaded to dismiss Debtor's case at this time. Debtor filed a first amended plan on February 13, 2014 and appears to be making efforts to provide the court and Trustee with the information required to confirm a Chapter 13 Plan. The court is curious to hear from the Trustee whether the income and tax documents provided are sufficient. The additional provisions on the Amended Plan appear to clarify the concerns regarding the length of the plan term. If it appears that cause exists to dismiss the case at the hearing, the court may change its tentative and grant the Motion; however, at this point in time, the court's decision is to deny the Motion to Dismiss.

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

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

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.

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 January 22, 2014. Twenty-eight 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 causing unreasonable delay that is prejudicial to creditors by not filing an Amended Plan and setting it for confirmation. The Trustee's Objection to Confirmation of Debtor's plan was heard and sustained on November 19, 2013 and a subsequent effort at confirming an amended plan was not made.

To date, Debtors have not filed an Amended Plan with a Motion to Confirm; therefore, cause exists to dismiss this case. 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.

21. [13-34374](#)-C-13 LYNETTE LEWIS
Mary Ellen Terranella

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-13-14 [[50](#)]

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 January 7, 2014). The docket reflects that the installment fee remains unpaid.

The court's tentative decision is to sustain the Order to Show Cause 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 fees not having been paid, the Order to Show Cause is sustained 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 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 February 5, 2014. Fourteen 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 deny the Motion to Dismiss as moot.

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 on the following grounds:

1. Debtor is \$1,736.64 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$868.32 is due on February 25, 2014. 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 has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. The case was filed on November 8, 2013 and Debtor has yet to confirm a plan. Trustee's Objection to Confirmation was heard and sustained on January 14, 2014 and Debtor has not filed an amended plan or with a motion to confirm.

The Trustee's Motion to Dismiss sets forth sufficient cause to grant the Motion to Dismiss; however, the court is sustaining the Order to Show Cause as to why Debtor has not paid the required filing fee installment (Dkt. 50). By sustaining the Order to Show Cause, the court is dismissing the case without prejudice. Therefore, the Trustee's Motion, while properly plead and accurate, is moot and will be denied as such.

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 as moot.

23. [13-35276](#)-C-13 ANA TREVINO ORDER TO SHOW CAUSE - FAILURE
Richard L. Jare TO PAY FEES
1-6-14 [[28](#)]

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 January 2, 2014). The court docket reflects that on January 16, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

24. [13-35280](#)-C-13 ALFREDO RODRIGUEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-10-14 [[24](#)]

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 January 2, 2014). The court docket reflects that on January 16, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

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 January 9, 2014. 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 Debtor's case because Debtor has engaged in unreasonable delay that is prejudicial to creditors by not filing the following documents:

1. Form 22C
2. Statement of Financial Affairs
3. Statistical Summary
4. Summary of Schedules

Debtor has not filed the requisite documents; therefore, pursuant to 11 U.S.C. § 1307(c), 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 January 22, 2014. 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 Debtor's case because Debtor did not appear for examination at the First Meeting of Creditors held January 9, 2014. The Trustee lacks sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325.

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 - 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 January 16, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtor is in material default with respect to the terms of the confirmed plan. Pursuant to § 5.03 of the Plan, "[i]f Debtor defaults under the plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to Trustee's calculations, Debtor's plan will complete in 73 months as opposed to 60 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The Class 2 claim of El Dorado County Tax Collector (Claim 5) was \$4,092.72 greater than scheduled. The remaining amounts to be paid under the plan total \$32,486.96. Debtor's monthly plan payment, net of Trustee's fees is approximately \$590.00. Thus, \$32,486.96 divided by \$590.00 equals 56 months remaining. Debtor has already completed 17 months of her plan.

Debtors' Opposition

Debtor states that she will be filing a new plan to provide for the correct amount to the El Dorado County Tax Collector and requests that Trustee's Motion be denied based on this representation.

Discussion

On February 13, 2014, Debtor filed an Amended Plan and set for hearing a Motion to Confirm the plan. The court will hear the Motion to Confirm on April 1, 2014. Debtor is taking the steps necessary to provide for the Class 2 claim and confirm a Chapter 13 plan. Therefore, the court's decision is to deny the Motion to Dismiss 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.

28. [13-35889](#)-C-13 LA KEISHA MATLOCK ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
1-24-14 [[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 due on January 21, 2014). The court docket reflects that on February 14, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

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.

29. [13-35893](#)-C-13 BARRY MCGWIRE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-23-14 [[21](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on January 21, 2014). The court docket reflects that the fees have not been paid.

The court's tentative decision is to sustain Order to Show Cause 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 docket reflects that the fees upon which the Order to Show Cause is based have not been paid.

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.

30. [11-39194](#)-C-13 JASON WRIGHT
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO TENDER FEE FOR FILING
TRANSFER OF CLAIM
1-21-14 [[57](#)]

Tentative Ruling: The court issued an order to show cause in Debtor's case was issued because a transfer of claim was filed on January 7, 2014 without payment of the \$25.00 fee for filing a transfer of claim, as prescribed by item 20 of the Bankruptcy Court Miscellaneous Fee Schedule (28 U.S.C. § 1930(b)), effective May 1, 2013. The party is required to appear, per the order to show cause, notwithstanding remedy of the defect prior to the hearing. Dkt. 57.

The court's tentative decision is to discharge the Order to Show Cause. 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:

Stride Card was ordered to appear before the Court and show cause why the above-referenced pleading should not be stricken, sanctions imposed on the filer and/or their counsel, or other appropriate relief ordered for such failure to comply with the provisions of 28 U.S.C. § 1930(b).

The docket reflects that the Transfer of Fee Claim was paid on January 28, 2014 (Dkt 59). The court's decision is to discharge the Order to Show Cause; however, Stride Card is still required to appear, per the order to show cause language.

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.

31. [13-35194](#)-C-13 RANDY RICHARDSON AND MOTION TO DISMISS CASE
TSB-1 JACQUELYN 1-22-14 [[18](#)]
Peter L. Cianchetta

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 January 22, 2014. Twenty-eight 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 \$4,314.99 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,314.99 is due on January 25, 2014. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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