

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

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

1. [13-33301](#)-C-13 GLORIA WELLINGTON MOTION TO DISMISS CASE
 DPC-1 Peter G. Macaluso 7-30-14 [[71](#)]
 Thru #2

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 30, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because it appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$18,970.00 under the terms of the plan confirmed on April 8, 2014. Debtor is delinquent \$7,660.00 under the terms of the modified plan filed May 15, 2014. In total, Debtor has made the following payments to the Trustee:

1. 06/13/2014: \$30.00

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

2. 05/14/2014: \$3,800
3. 12/27/2013: \$3,800
4. 11/26/2013: \$3,800

As Debtor is not current on the payments under the plan, cause exists to dismiss this case. The motion is granted and the case is dismissed.

Debtor's Response

Debtor replies and states that she will be current on or before the date of the hearing.

As it stands, the court lacks any documentation from Debtor indicating that she is current on plan payments. Therefore, cause exists to dismiss her case.

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

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

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

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

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.

The court having dismissed the case at the hearing on September 10, 2014, the evidentiary hearing is vacated and the Motion to Modify is denied as moot.

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

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

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

IT IS ORDERED that the Motion is to
Modify is denied as moot.

IT IS FURTHER ORDERED that the
Evidentiary hearing is vacated.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to dismiss the case because Debtor is delinquent \$1,700.00 in plan payments to the Trustee to date and the next scheduled payment of \$1,700.00 is due on August 25, 2014. Debtor has paid \$6,800.00 into the plan to date. 11 U.S.C. § 1325(a)(6).

Debtor's Opposition

Debtors state that they will be current on plan payments on or before the hearing date.

Discussion

Despite Debtor's statement that they will be current by the hearing, to date, Debtors have not submitted a supplemental declaration stating they are in fact current. Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtors are \$1,924.50 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$5,160.00 is due on August 25, 2014. Debtor has paid \$22,592.50 into the plan to date.
2. Debtors filed their case on February 10, 2014 and have yet to confirm a plan. Debtors' Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

Debtors' Response

Debtors assert they will be current on plan payments by the date of the hearing. Debtors further assert that a new Amended Plan and Motion to Confirm will be filed before the hearing on this motion.

Discussion

As of September 3, 2014, Debtors have not submitted evidence to the court that they have cured the plan payment delinquency. Further, the docket does not reflect that an Amended Plan and Motion to Confirm the Plan were filed. 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.

5. [14-26007](#)-C-13 ADDISON BEVERLY
Thru #6 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-11-14 [[25](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 4, 2014). The court docket does not reflect that the fee was paid.

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

The court having granted the Chapter 13 Trustee's Motion to Dismiss [DPC-2] at the hearing on September 10, 2014, the Order to Show Cause is discharged as Moot.

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

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

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

IT IS ORDERED that the Order to Show Cause
is discharged as moot.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on July 17, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$1,800 delinquent in plan payments to the Trustee to date and the next scheduled payment \$1,800 is due on August 25, 2014. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor 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).
5. Debtor did not report prior filings. Debtor has filed twelve prior cases since September 2008.

Pursuant to 11 U.S.C. § 1307, Debtor's delay in prosecuting the case are prejudicing the creditors and cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

The court's decision is to deny the Motion to Dismiss without prejudice.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$460.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$160.00 is due on August 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor's Motion to Confirm was heard and denied on June 24, 2014. Debtor has not filed an Amended plan.

Debtor's Opposition

Debtor asserts that she is now current on all plan payments under the filed Second Amended Chapter 13 Plan. Debtor is ready and willing to make payments of \$165.00 beginning September 25, 2014. The Second Amended Chapter 13 plan was filed August 25, 2014 and set for hearing on October 7, 2014.

Discussion

A review of the docket indicates that Debtor filed an Amended Plan on August 25, 2014 (Dkt. 64) and set it for a confirmation hearing on October 7, 2014 (See Notice of Hearing (Dkt. 61)). Debtor informed the court that she is present on plan payments and is taking the appropriate steps to prosecute her Chapter 13 case. Therefore, the court does not find cause to dismiss and will deny the motion without prejudice.

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

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

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

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

8. [13-34010](#)-C-13 JOHN/TANYA MANNIX MOTION TO DISMISS CASE
DPC-1 Marc A. Caraska 8-18-14 [[106](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on September 8, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

9. [14-26110](#)-C-13 NATALIYA SHAYNYUK ORDER TO SHOW CAUSE - FAILURE
Thru #11 Pro Se TO PAY FEES
8-13-14 [[45](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 8, 2014). The court docket does not reflect that the fee was paid.

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

The court having granted the Chapter 13 Trustee's Motion to Dismiss [DPC-2] at the hearing on September 10, 2014, the Order to Show Cause is discharged as Moot.

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

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

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

IT IS ORDERED that the Order to Show Cause
is discharged as moot.

10. [14-26110](#)-C-13 NATALIYA SHAYNYUK
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-14-14 [[25](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 9, 2014). The court docket does not reflect that the fee was paid.

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

The court having granted the Chapter 13 Trustee's Motion to Dismiss [DPC-2] at the hearing on September 10, 2014, the Order to Show Cause is discharged as Moot.

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

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

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

IT IS ORDERED that the Order to Show Cause
is discharged as moot.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on August 6, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on July 24, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
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 is \$100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on August 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.

12. [13-35611](#)-C-13 KENNETH HUSARIK AND KELLY MOTION TO DISMISS CASE
DPC-1 ALLEN 8-8-14 [[67](#)]
Richard L. Sturdevant

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on September 5, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

13. [14-26412](#)-C-13 BERNICE SCARBOROUGH MOTION TO DISMISS CASE
DPC-2 Pro Se 8-13-14 [[24](#)]

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required.

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

The Motion to Dismiss is granted and the case is dismissed.
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The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on August 7, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

2. Debtor is \$600.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$600.00 is due on August 25, 2014. Trustee has received no plan payments to date. 11 U.S.C. § 1325(a)(6).
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's Chapter 13 documents are incomplete and the Trustee cannot determine whether Debtor can afford to make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). See Motion to Dismiss (Dkt. 24, DPC-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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default with respect to section 5.03 of the confirmed plan, which provides that if the plan does not complete in sixty (60) months, the Trustee may request appropriate relief. Here, based on the Trustee's calculations, the proposed plan will complete in sixty-four (64) months. 11 U.S.C. § 1322(d). According to Trustee, priority claims were \$3,582.76 greater than scheduled.

Debtor's Opposition

Debtor asserts that she will file a Modified Plan that will include the priority claim of \$3,582.76 due to the Internal Revenue Service.

Discussion

As of September 4, 2014, Debtor has not filed an Amended Plan on the docket. The confirmed plan violates 11 U.S.C. § 1322(d) and cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

holding that:

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

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

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

15. [14-24323](#)-C-13 DAWN VILARDI
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-2-14 [[19](#)]

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 June 27, 2014). The court docket reflects that on July 3, 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default with respect to a term of the confirmed plan. 11 U.S.C. § 1307(c)(6). Specifically, Debtor is delinquent \$3,260 in plan payments and another payment of \$1,315.00 will come due prior to the hearing on the Motion.

Debtors' Response

Debtors assert that they fell behind in payments because business slowed down. They anticipate business picking-up soon and state they will be current by the date of the hearing.

Debtors have not submitted evidence to the court demonstrating that they cured the default cited by the Trustee in his Motion to Dismiss. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

MAY 28 2014 HEARING

At the May hearing, the court entertained a Motion to Dismiss filed by the Chapter 13 Trustee [NLE-4]. The Trustee moved the court for an order dismissing the case pursuant to 11 U.S.C. § 1307(c)(1) on the basis that Debtor was causing an unreasonable delay that is prejudicial to creditors. Debtor was \$4,180.00 delinquent in plan payments to date, and the next scheduled payment of \$3,065.00 was due on April 25, 2014. Debtor has paid \$35,665.00 into the Plan to date, and Debtor last paid on January 23, 2014.

Additionally, Trustee stated that there has been an unreasonable delay in filing a new plan. The case was filed on February 8, 2013 and Debtor had yet to confirm a Plan. The Debtor's Motion to Confirm Amended Plan, RLC-2 was heard and denied on January 14, 2014, and Debtor had failed to amend the Plan and set a confirmation hearing to date.

The Debtor filed a response to the Trustee, stating that she had fallen behind on plan payments and is proposing a new plan. Dckt. No. 147. Debtor stated that she has had illness this winter that took eight weeks to recover from. Debtor also stated that she has continued to make progress

with the Bay Area Rapid Transit District ("BART") and anticipates additional payments that should allow her to make supplemental payments to catch up on the missed payments this winter. Debtor requested that the present motion be dismissed without prejudice or continued to the date set for a hearing on Plan confirmation.

The court continued the hearing on the Motion to September 10, 2014 at 2:00 p.m. Since the May 2014 hearing, the Trustee has filed a supplement to his Motion to Dismiss.

Chapter 13 Supplement to Motion to Dismiss

The Chapter 13 Trustee informs the court that Debtor remains delinquent under the terms of the plan. Debtor is \$18,050 delinquent to the Trustee. The last payment received by the Trustee was on August 20, 2014 in the amount of \$3,065.00. Debtor made a lump-sum payment of \$18,390 on July 24, 2014.

The plan filed November 22, 2013 and denied confirmation on January 14, 2014 provided the following in the Additional Provisions: "At least \$20,000 shall be paid to the trustee by June 2014, with additional sums of at least \$10,000 per year paid each year of the Plan until \$45,000 is paid in addition to the monthly plan payments." Debtor has not made the \$20,000 lump-sum payment.

Further, Debtor has not amended the plan or set a new confirmation date.

Discussion

The court continued the hearing on the Motion to Dismiss to afford Debtor the opportunity to catch-up on missed plan payments. Specifically, the court continued the hearing date out almost four (4) months. Debtor remains behind in plan payments to the Trustee and has not filed an amended plan nor set a plan for confirmation. Debtor's case was filed February 8, 2013 and despite several attempts, Debtor has not been successful in confirming a plan. It has now been almost nine (9) months since the last modified plan was presented to the court for confirmation and Debtor's delay in prosecuting her Chapter 13 case is unreasonable and prejudicial to creditors. Therefore, the court finds cause under 11 U.S.C. § 1307(c)(1) to dismiss the case 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 granted and this case is dismissed
without prejudice.

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

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18. [14-23926](#)-C-13 DANIEL/MARY GUTTEREZ
DPC-3 Peter L. Cianchetta

MOTION TO DISMISS CASE
8-8-14 [[34](#)]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Pursuant to 11 U.S.C. § 1307(c)(1), Debtors are causing delay that is unreasonable and prejudicial to creditors. Trustee's Objection to Confirmation was heard and sustained on June 24, 2014. To date, Debtors have not filed an Amended Plan and set it for confirmation.

Debtor's Opposition

Debtor's argue they have prepared and amended plan that is expected to be ready for filing by August 29, 2014.

As of September 4, 2014, the court's docket does not show an Amended Plan being filed. 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 shall issue a minute order substantially in the following form

holding that:

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

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

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

19. [14-24928](#)-C-13 DONALD MARCROFT
Thru #21 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-12-14 [[42](#)]

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 August 7, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

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 July 8, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*) and Office of the United States Trustee on August 15, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on June 12, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The Meeting was continued to October 2, 2014 at 10:00 am.
2. Debtor is \$200 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on August 25, 2014. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-

petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

4. Pursuant to 11 U.S.C. § 1307(c)(1), Debtor is causing delay that is unreasonable and prejudicial to creditors. Trustee's Objection to Confirmation was heard and sustained on July 22, 2014. To date, Debtor has not filed an Amended Plan and set it for confirmation.

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

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

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

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

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

22. [14-25129](#)-C-13 NYIDRA WALKER
Thru #23 Justin K. Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-21-14 [[28](#)]

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 July 14, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

23. [14-25129](#)-C-13 NYIDRA WALKER
Justin K. Kuney

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-14 [[36](#)]

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 August 13, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

24. [11-33630](#)-C-13 SAJJAD/LINDA HAMID
NLE-1 Scott J. Sagaria

OBJECTION TO NOTICE OF INTENT
TO ENTER DISCHARGE BY DAVID P.
CUSICK
6-23-14 [[75](#)]

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

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 23, 2014. Twenty-eight days' notice is required. That requirement was met.

The Objection to Notice of Intent to Enter Discharge 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 Objection is sustained and Debtors are denied a Chapter 13 discharge.
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The Chapter 13 Trustee objects to Debtors' efforts at receiving a Chapter 13 discharge, based on the following:

1. Debtors filed the 11 U.S.C. § 1328 Certificate on June 6, 2014 (Dkt. 65); however, Debtors did not check the box to indicate that a discharge had been received in a prior Chapter 7 case.
2. Debtors filed a Chapter 7 case on April 5, 2010 (10-28713) and received a discharge on March 3, 2011 (Dkt. 40). It does not appear that Debtors are entitled to a discharge as they received a discharge in a chapter 7 case within four years prior to the filing of the chapter 13 case.

Pursuant to 11 U.S.C. § 1328(f)(1), the court shall not grant a discharge provided for in a Chapter 13 plan if the debtor has received a discharge in a Chapter 7 case during the four-year period preceding the date of the order for relief under Chapter 13.

Here, Debtor received a discharge on March 3, 2011 in a case filed on April 5, 2010. The date for the order for relief in the instant Chapter 13 case is the filing date of May 31, 2011. The Chapter 7 case in which Debtors received a discharge falls squarely in the four-year period

preceding the filing of the Chapter 13 and; therefore, the objection will be sustained and Debtors will not be granted a Chapter 13 discharge.

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 Objection 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 Objection is sustained, the Debtors are denied a Chapter 13 discharge, and the Clerk of the Court will not enter a Chapter 13 Discharge in Case Number 11-33630-C-13C.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on June 4, 2014. Twenty-eight days' notice is required.

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

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

PRIOR HEARING

On July 9, 2014, the court heard Trustee's Motion to Dismiss, which was made on the following grounds:

1. Debtor filed this case on March 7, 2014, and has not made a payment to the Trustee to date. The Plan calls for Debtors' funds held in the trust account of attorney David D. Carrico, approximately \$70,000.00, to be relinquished to the custody of the Trustee and be used to cure her mortgage arrears, which are estimated at \$58,000.00 and owed to Select Portfolio Servicing. The Plan does not indicate when the payment will be made. Two payments have come due since the filing of the case on March 7, 2014.
2. The Trustee's Objection to Confirmation, TSB-1, was heard and sustained at the hearing on May 20, 2014, and the Debtor has not amended the Plan and set a confirmation hearing to date.

3. Debtor has \$70,000.00 in non-exempt equity, which is from the approximate amount of Debtor's funds held in a trust account of attorney David D. Carrico listed on Schedule B, that may be available to creditors in a Chapter 7 proceeding.

Debtor responded to the Trustee with the following:

1. Debtor's attorney acknowledges the deficiencies of the Amended chapter 13 Plan, and will be filing a Second Amended Chapter 13 Plan on June 24, 2014 to be heard on August 5, 2014, that proposes to pay her ongoing mortgage payments, and all of the unsecured creditors that are expected to file timely claims a 100% dividend. The Trustee has had available the \$42,985.57 turned over to him by attorney David Carrico from which ongoing mortgage payments can be paid. Debtor states that her Second Amended Chapter 13 Plan provides for additional monthly payments of \$2,710.00 on June 25, 2014, and thereafter monthly, for the duration of the 36-month plan.
2. This case was filed on March 7, 2014, and the Trustee's objection was heard and sustained on May 20, 2014. Debtors' Amended Chapter 13 Plan and Motion to Confirm were filed two weeks later. The Opposition states that Debtor is 74 years old, no longer drives, and is not "usually available" to go to her attorney's office to sign documents.
3. The Opposition further states that Debtor's attorney acknowledges that some portion of the \$42,985.57 in the possession of the Trustee (not \$70,000.00 held by Mr. Carrico) is not exempt. Debtor's case was filed to avert a scheduled foreclosure sale of the home in which she and her "four disabled downs children" reside. Her Second Amended Plan proposes to pay in full all of her unsecured creditors that timely file claims.
4. Debtor's Second Amended Plan proposes ongoing payments of \$2,710.00 on June 25, 2014, and monthly thereafter. The Opposition states that Debtor will be able to afford this because in addition to the \$1,433.00 in projected disposable income listed on her Schedule J, after paying her scheduled expenses, which is derived from her wages for caring for her four children, she has available approximately \$3,122.10 monthly in Social Security benefits that are paid to her and the children. This amount is listed in her Statement of Financial Affairs. The Opposition states that Debtor can afford this plan payment.

At the hearing, the court decided to continue to matter to September 10, 2014 for Debtor's counsel to be present to speak on the matter. Further, the time will permit Debtor to address the feasibility of the Amended Plan in the event that Debtor's mortgage lender files a proof of claim.

DISCUSSION

Since the first hearing on the Motion to Dismiss, the court held a hearing on Debtor's Motion to Confirm the subject Amended Plan and Debtor's mortgage lender filed a proof of claim.

On August 5, 2014, the court heard and denied Debtor's Motion to Confirm the Amended Plan (Dkt. 89). The order denying confirmation was entered August 10, 2014. The plan was not confirmed because of delinquent plan payments, lack of disclosure, Chapter 7 liquidation issues, and Debtor not provided for arrears owed to the mortgage lender.

Debtor's mortgage lender, Deutsche National Bank Trust Company, filed Proof of Claim 4 on July 7, 2014, asserting a total secured claim of \$414,194.68 with arrearage totaling \$57,339.68.

Procedural History

The case was filed on March 7, 2014, and a Notice of Incomplete Filing was issued on that date, while a Plan was filed and no Form 22c, Schedule I or J was filed. A Notice of Intent to Dismiss was issued on March 11, 2014, stating that Debtor had until March 21, 2014 to file the remaining documents. Debtor filed the documents on March 20, 2014. Dckt. No. 21.

The Trustee objected to confirmation on April 16, 2014, which was sustained on May 20, 2014. The Trustee moved to dismiss or convert this case due the unreasonable delay caused by Debtor, and paid the required fee for the motion on June 3, 2014. Debtor had signed an amended plan on June 2, 2014, but that was filed after the Motion to Dismiss or Convert, Dckt. No. 47. After the Trustee's Supplement to this Motion was filed, Dckt. No. 54, a second amended plan was filed on June 23, 2014. Dckt. No. 63.

Delinquency

Trustee had asked the court to find a delay in part because of no payments made into the plan, where two had come due as of June 3, 2014, the date this motion was filed. The original plan, called for no set monthly payment, but for a payment of approximately \$70,000.00 from funds held in the trust account of attorney David P. Carrico.

Trustee admits to the receipt of \$42,985.57 on June 4, 2014, and \$1,500.00 on June 24, 2014. The Debtor may be delinquent under the original plan, although the plan lacks any detail as to when the payments are to be made. The Debtor filed an amended plan on June 23, 2014, Dckt. No. 63, which calls in Additional Provisions, Page 7, for a monthly payment of \$2,710.00 on June 25, 2014, and thereafter, as well as \$42,985.57. Debtor is currently delinquent by \$1,210.00.

Unreasonable Delay in Filing a New Plan

Debtor appears to have prepared and was ready to file an amended plan within 14 days of the hearing denying confirmation of the first plan. While the Trustee acknowledged that this would normally considered prompt, the Trustee maintains that the plans are part of a pattern of unreasonable delay. The Debtor is delinquent under the second amended plan, which calls for a monthly contract installment to Select Portfolio Servicing of \$3,351.29, Dckt. No. 63 at 2, with a monthly plan payment by the Debtor of only \$2,710.00 and apparently a draw from the \$42,985.57 plan payment, with no cure or proposed treatment of the \$58,000.00 of arrears on this claim, previously admitted to by the Debtor in the first amended plan and original plan. Dckt. Nos. 48 and 8.

Non-Exempt Equity

Debtor has claimed no exemption in the funds paid to the Trustee, where \$42,985.57 appears to have been scheduled as Item No. 35 on Schedule B.

Plan Exceeds 60 Months

While Debtor now claims the Amended Plan will complete in 60 months, the inability to explain the status of the mortgage arrears admitted to earlier appears to show it will likely exceed 60 months, assuming claims are filed. While the Bar Date has almost passed and no claim has been filed, the Trustee objects as the Trustee must assume the claim will be filed for arrears, otherwise the treatment of the claim would not be inside the plan.

Ability to Make Payments

While Debtor's Counsel appears to be under the impression that Schedule I, when it asks for "List all other income regularly received: 8e, Social Security, Dckt. No. 21 at 4, can be answered as \$0.00 without committing perjury when the Debtor now claims they received social security income, the Trustee cannot understand the argument.

Declaration

Based on the obvious discrepancy between Schedule I and the Debtor's declaration now filed, Dckt. No. 61, the Trustee believes that the court should not find the declaration credible without an evidentiary hearing.

RESPONSE BY DEBTOR TO TRUSTEE'S REPLY

Delinquency

Debtor responds that the initial premise of this case was the the servicing of the Debtor's ongoing mortgage payments of \$3,351.29 would be paid from the \$42,985.57 in the possession of the Trustee. Debtor's attorney apparently states that he was uncertain how Debtor could confirm a plan given the estimated mortgage arrears of \$58,000 even with the \$3,351.29 available from the Trustee. There is the possibility of a confirmable plan given that the first mortgage holder has not filed a proof of claim, with a deadline of July 9, 2014. The Debtor will be able to confirm a plan that pays 100% of her unsecured claim holders that actually file claims, as well as well as service her ongoing mortgage because of the total of the unsecured claims as of July 3, 2014, is only \$2,175.01.

Debtor's most recent plan calls for ongoing monthly payments of \$2,710.00 to fund this 100% plan, beginning on June 25, 2014-\$1,500 of which has been paid and the delinquency of \$1,200 is acknowledged. Debtor's attorney's intention is for Debtor's money order for \$1,210 to be sent to Trustee by the hearing so that Debtor can be current.

Delay in Filing New Plan

The initial amended plan was filed within 13 days of the objection to confirmation being sustained on May 20, 2014 of Debtor's original Plan, the same day the Motion to Dismiss was filed. Debtor's attorney asserts

that he did not file it in response to the Motion to Dismiss, but rather when it occurred to him that a plan would actually be confirmable if the first mortgage holder did not file their claim by the July 9, 2014 deadline.

Non-Exempt Equity

The Response states that some portion of the \$42,985.57 is actually exempt, but has not been claimed because Debtor's desire is that those funds will be 100% available to fund her Chapter 13 plan so that she will be able to remain in her home.

Plan Duration

The Response argues that the Second Amended Plan will finish in 36 months if the mortgage claim is not filed by July 9, 2014.

Ability to Make Plan Payments

Debtor's attorney states that Debtor's \$2,122.10 in social security benefits for herself and her three children is accounted for on page 1 of the Statement of financial Affairs. Debtor's attorney also states that he furnished the required documents to the Trustee for the First Meeting of Creditor, and provided copies of the pages from Debtor's Social Security statements showing the amounts Debtor and her children were receiving. Debtor's attorney believes that the case of *In re Welsh*, 2013 U.S. App. LEXIS 5880 (9th Circuit, 2013) indicates that social security income no longer has to be factored into the ability of Debtor to fund a plan payment on her Schedule I.

RULING

The court continued the hearing on the Motion to Dismiss from its original hearing date of July 9, 2014, to allow Debtor's attorney to appear at the July 22, 2014 hearing and address the feasibility of the Amended Plan and the Debtor's ability to fund the Second Amended Plan (and file a Third Amended Plan, if necessary). Debtor's counsel claimed that by that time, Debtor and Debtor's counsel would know for certain if the mortgage holder has filed a claim for the arrearage on Debtor's by the claims deadline. Dckt. No. 68.

On the July 22, 2014 hearing date, the issues raised by the Trustee in the Trustee's Motion to Dismiss were not resolved. The court again decided to continue the hearing to this hearing date, to afford Debtor the opportunity to have a hearing for her motion to confirm the Second Amended Chapter 13 Plan. Dckt. No. 75.

The court is denying confirmation of the Debtor's Third Amended Plan, MOH-3, scheduled to be heard on September 9, 2014, on the basis that Debtor has failed to amend Schedules I and J to show her current income and expenses.

In its ruling, the court noted that it appears that Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6) or the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). The Trustee has stated that Debtor is under median income and proposes plan payments of \$5,420.00 total through July 25, 2014 (4 months); then \$4,212.00 for 56 months with a 100% dividend to unsecured claim holders. The Debtor's

Declaration in support of confirmation, Dckt. No. 81, describes the Debtor's income. However, Debtor has not amended her Schedules I and J to show the her current income and expenses. The amended Plan therefore, does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and cannot be confirmed at this point in time.

There is no indication that the Debtor has resolved the outstanding issues raised in the Chapter 13 Trustee's Motion to Dismiss, and subsequent responses and replies to Debtor's Opposition to the Motion to Dismiss. Debtor has offered no proof of payment, receipts, account statements, or Trustee's invoices showing that she has cured her delinquency.

The court has denied confirmation of the Third Amended Plan filed by Debtor, due to Debtor neglecting to amend her Schedules I and J to show her Current Income and Expenses. The Trustee has also noted that the Plan does not represent Debtor's best efforts under § 1325(b), and that it appears that the Debtor cannot make the plan payments required under 11 U.S.C. § 1325(a)(6) called for by her Third Amended Plan.

Debtor has not claimed an exemption in the funds paid to the Trustee by revising her Schedules, and has not shown that she is able to make payments under her newly proposed plan. Debtor has also not provided credible evidence of her income, and an explanation of her social security benefits and payments as briefly alluded to in Debtor's Schedule I. Debtor states that she has provided the required documents to the Trustee for the First Meeting of Creditors, and provided copies of the pages from Debtor's Social Security statements showing the amounts Debtor and her children were receiving, but those documents have not been uploaded to the docket for the court's review.

In light of the conflicting information provided in Debtor's most recently filed Schedule I and the Debtor's declaration, Dckt. No. 61, the Trustee is not accepting the face value truth of testimony offered in potential, new declarations filed by the Debtor (in support of confirmation of the plan and reflecting her income and expenses) without a preceding evidentiary hearing.

Debtor's less-than-forthcoming, nonchalant attitude regarding her actual income and expenses (even in the face of Trustee and court's repeated demands on Debtor to file revised schedules), and delay in addressing the issues raised by the Trustee in multiple Objections to Confirmation and the present Motion to Dismiss, all serve to cast doubt as to whether Debtor can confirm a plan that accurately reflects Debtor's claims, financial affairs, and income and expenses. Even moreso, the court questions whether the Debtor can do so in good faith, in accordance with the factors outlined in the case of *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988). It currently appears that Debtor is not diligently prosecuting her case, causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default of section 5.03 of the plan as Debtor's plan will complete in forty-three months, as opposed to the proposed thirty-six months. Secured claims filed were \$3,330 greater than scheduled.

Debtor's Opposition

Debtor states that he will work with his attorney to propose a modified plan that does comport with Code requirements.

As of September 4, 2014, the docket does not show that an Amended Plan was filed. Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

Tentative Ruling: The Notice of Default and Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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.

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Notice and Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 11, 2014. Debtor set a hearing on the Notice and Motion for July 29, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee filed a Notice of Default and Motion to dismiss based on the following:

1. Debtor did not make all payments due under the plan. As of June 10, 2014, payments are delinquent in the amount of \$1,240. An additional payment of \$1,240 will become due on June 25, 2014.

Debtor's Opposition

Debtor opposed the Notice of Default and set the matter for a hearing on July 29, 2014. Debtor argued in his opposition that the missing May 2014 payment was not a material default because it was a "lost payment" and it will be cured once Debtor's bank refunds the lost cashier's check

after ninety (90) days. On June 20, 2014, Debtor dropped of his June 2014 payment in person to the Trustee.

Discussion

As a result of the Debtor's representations, the Trustee requested the court continue the hearing on the Notice of Default to September 10, 2014 to permit Debtor to receive the May 2014 refund. The Debtor filed a statement of non-opposition to the Trustee's request and the court so ordered the continuance.

Since the filing of the Notice and subsequent opposition, nothing new has been filed on the docket indicating that Debtor remedied the delinquent payment. Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 15, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on June 12, 2014 and the continued Meeting held August 7, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$1,150.57 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,150.57 is due on August 25, 2014. Debtor has paid \$2,301.14 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written

statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

4. Debtor 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).
5. Debtor's plan was filed on May 22, 2014; however, it was not served on all interested parties and there is no pending Motion to Confirm.

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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtors are in material default under Section 2.13 of the plan. Debtors did not provide for the priority portion of the Franchise Tax Board's claim (Claim No. 7), in the amount of \$1,376.76 (of which, \$1,194.12 was claimed as priority). Debtor was provided a Notice of Filed Claims on August 26, 2013 (Dkt. 74).
2. Debtor is \$3,173.87 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,174.00 is due on August 25, 2014. Debtor has paid \$53,958.13 into the plan to date.

Debtor has not responded to the Trustee's Motion and there is no indication that the material default or delinquency have been cured. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor filed her case on April 30, 2014 and have yet to confirm a plan. Trustee's Objection to Confirmation was heard and sustained at the hearing on July 1, 2014 and Debtor has not amended the plan and set a confirmation hearing date. Debtor is causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Response

Debtor asserts that she is working with counsel to file an Amended Plan an Motion to Confirm prior to the hearing date on this Motion.

A review of the case docket does not show that Debtor filed an Amended Plan and Motion to Confirm. 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.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$1,020.00 delinquent in plan payments to the Trustee to date. Debtor has paid \$1,870.00 into the plan to date. 11 U.S.C. § 1325(a)(6). The last payment was posted November 5, 2013.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 20, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default under the terms of the plan. Debtor is delinquent \$654.00 and payment totaling \$2,180.00 have come due under the plan. Debtor has paid a total of \$1,667.00 to the Trustee, with the last payment received June 10, 2014. Trustee refunded \$141.00 to Debtor on November 6, 2013, for court filing fees paid to the Trustee in error. The plan payments made to the Trustee are \$1,526.00. Another payment of \$218 will come due August 25, 2014.

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 shall issue a minute order substantially in the following form

holding that:

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

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

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

34. [14-25255](#)-C-13 SHARON HOLLEY
Thru #35 Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-31-14 [[42](#)]

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

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 July 18, 2014). The Docket reflects that the fee subject to this Order to Show Cause was paid on August 4, 2014.

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

The fee having been paid, the Order to Show Cause is discharged, no sanctions are issued, and the case is to remain open.

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 issued, and
the case is to remain open.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 26, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is \$581.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$270.00 is due on September 25, 2014. Debtor has paid \$229.00 into the plan to date.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6). Debtor is delinquent \$715.00 in plan payments. Debtor must be current under all payments called for by any pending Plan.

Debtor's Response

Debtor asserts that he will be current by the hearing date.

Discussion

Debtor has not submitted evidence from which the court can deduce that he is current on plan payments. Pursuant to 11 U.S.C. § 1307(c)(6), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 21, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss without prejudice.

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor filed his case on December 13, 2013 and has yet to confirm a plan. Debtor's Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtor has not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtor's Opposition

Debtor asserts that on August 21, 2014 Debtor set for hearing an Amended Plan and Motion to Confirm the amended plan.

Discussion

A review of the docket shows that Debtor did file an Amended Plan and Motion to Confirm on August 21, 2014. A cursory review of the Amended Plan suggests that Debtor has made changes and provided Declarations in an effort to address the issues with the previous plan proposed for confirmation. The court is satisfied at this time with Debtor's efforts to prosecute this Chapter 13 case. Cause does not currently exist to dismiss this case. The motion is denied and the case is to remain open.

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.

38. [14-25560](#)-C-13 ROSA ALVAREZ
DPC-1 Amid T. Bahadori

MOTION TO DISMISS CASE
7-9-14 [[28](#)]

CASE DISMISSED 8/19/14

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

The case having previously been dismissed, the Motion is dismissed as moot.

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

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

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

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

39. [14-26160](#)-C-13 MICHAEL MCCALL
Thru #42 Charnel J. James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-16-14 [[29](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 installment fee due on July 11, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause is
sustained, no sanctions are ordered, and the case
is dismissed.

40. [14-26160](#)-C-13 MICHAEL MCCALL
Charnel J. James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-17-14 [[30](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$30.00 due for Amended Master Address List filing). The Docket reflects the fee was paid on August 1, 2014. fee.

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

The fee 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 and no sanctions are ordered.

41. [14-26160](#)-C-13 MICHAEL MCCALL
Charnel J. James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-14 [[41](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 installment fee due on August 11, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause is
sustained, no sanctions are ordered, and the case
is dismissed.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 25, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on August 14, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$2,496.66 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,248.33 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.
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. 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).

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.

43. [14-23562](#)-C-13 ROTONDA LLOPIS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-11-14 [[45](#)]

CASE DISMISSED 7/14/14

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 9, 2014. Twenty-eight days' notice is required.

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

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

PRIOR HEARING

The court first heard the Trustee's Motion to Dismiss on July 9, 2014. The Trustee requested the court dismiss the case on the basis that the Debtors were in material default pursuant to §6.03 of the Plan, which provides that if "Debtor defaults under this plan, or if the plan will not be complete within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1."

According to Trustee's calculations, the Plan will complete in 45 months, as opposed to the proposed 36 months. It appears that the mortgage arrears claim was \$2,831.88 greater than scheduled.

Debtors respond by stating that the Plan provided for the payment of arrears on the Debtors' mortgage in Class 1 of the Plan, with an arrearage listed at \$2,640.09. The mortgage creditor filed a Proof of Claim, showing the arrears amount to be greater than that listed by Debtors. Dckt. No. 74.

Debtors acknowledge that based on the foregoing, the plan will not complete in 36 months as originally contemplated by the Debtors due to the greater amount that needs to be paid to the mortgage company.

The court granted a continuance for Debtor to propose an Amended Plan and set it for confirmation.

Debtor's Supplemental Response

On August 25, 2014, Debtors filed a supplemental response to the Trustee's Motion to Dismiss. Debtors state that they filed a Modified Chapter 13 Plan and Motion to Confirm set for hearing on September 30, 2014.

Trustee's Supplemental Declaration

On September 3, 2014, Ed Weedman, employee of the Chapter 13 Trustee, filed a supplemental declaration in support of the Motion to Dismiss.

Mr. Weedman informs the court that Debtors are delinquent \$3,100.88 under the terms of the plan confirmed on February 11, 2013. Debtors are also delinquent under the terms of the proposed plan by \$3,100.88 (filed August 6, 2014). Debtors have paid a total of \$18,787.84, with the last payment posted July 2, 2014.

Discussion

The court continued the hearing on the Motion to Dismiss for Debtors to file an Amended Plan and Motion to Confirm the Amended Plan. While Debtors did file the Amended Plan and concurrent Motion to Confirm, Debtors are now delinquent under the terms of the confirmed plan and the proposed plan. Therefore, pursuant to 11 U.S.C. § 1307(c)(1), cause exists to dismiss the case. The motion is granted and the case is dismissed 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 granted and the case is dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is in material default under section 2.13 of the plan because Debtor did not provide for the priority claim of the Employment Development Department (Claim No. 13) in the amount of \$1,154.56. Debtor was provided a Notice of Filed Claims on July 19, 2013 (Dkt. 47) which lists this claim on page 5.
2. Debtor is delinquent \$4,900 under the plan and it appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).

Debtor's Response

Debtors are preparing a Modified plan to provide for the claim of EDD and assert they will be current on payments by the time of the September 10, 2014 hearing.

Discussion

Debtors have not filed a Modified Plan and have not submitted

evidence that they are current on plan payments. 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 shall issue a minute order substantially in the following form holding that:

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default under section 5.03 because the plan will complete in 82 months, as opposed to 60 months. This exceeds the maximum time allowed under 11 U.S.C. § 1322(d).

Debtor's Response

Debtor opposes the Trustee's Motion on the basis that over extension of the plan terms relates to a Claim filed by Green Tree Servicing LLC based on a Deed of Trust dated 1995 on real property now not belonging to the Debtor. Debtors anticipate filing an Objection to the claim and requests

Discussion

Debtor has not filed an Objection to the Claim of Green Tree Servicing, LLC and; therefore, the plan remains overextended. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$1,207.35 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$538.51 is due on August 25, 2014. Debtor has paid \$679.18.00 into the plan to date. 11 U.S.C. § 1325(a)(6).
2. Trustee's Objection to Confirmation was heard and sustained on March 4, 2014. Debtor has not filed and Amended Plan nor set it for confirmation. 11 U.S.C. § 1307(c)(1).

Supplemental Declaration in Support of the Motion to Dismiss

On September 2, 2014, Corey Crom filed a supplemental declaration in support of the Motion to Dismiss. Crom's declaration references a letter sent to Trustee from Deborah Allen-Beyer, spouse of debtor and power of attorney. The letter is attached as Exhibit A to the Declaration and appears to be in response to the Motion to Dismiss.

In the letter, Debtorah Allen-Beyer states that she and her husband cannot meet the obligations to pay the debts due. The letter requests that

the court dismiss "our motion."

Discussion

It appears from the letter submitted by Debtor's wife (who holds power of attorney), that Debtor cannot maintain the payments needed to sustain a Chapter 13 plan. However, because the letter does not unequivocally request the court dismiss the case, it will be treated as a response to the Motion to Dismiss. The court is curious why Debtor and not Debtor's counsel is responding to the Motion to Dismiss and whether Debtor's counsel has discussed the option of conversion to Chapter 7 with Debtor and Debtor's spouse.

As it stands, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 15, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
2. Debtor 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).
3. Debtors' plan relies on a Motion to Value the secured claim of

National City. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

4. The plan was filed on July 16, 2014, but has not been served on all interested parties and not Motion to Confirm is pending.

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.

49. [14-26367](#)-C-13 CHRISTY NAVARRO
Thru #50 Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-23-14 [[24](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on July 18, 2014). The court docket reflects that on September 4, 2014, Debtor made the final installment 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.

50. [14-26367](#)-C-13 CHRISTY NAVARRO
Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-22-14 [[32](#)]

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

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 18, 2014). The court docket reflects that on September 4, 2014, Debtor made the final installment 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default with regard to section 2.08(b)(4)(i) of the plan, which provides: "If the holder of a Class 1 claim gives Debtor and Trustee notice of a payment change in accordance with FRBP 3002.1(b), Debtor shall adjust the plan payment accordingly."

Creditor Wells Fargo Bank, N.A. filed a Notice of Mortgage Payment Change on May 28, 2014, which changed the total new payment to \$691.26, effective June 21, 2014. Debtor has not increased the plan payment.

Debtor's Response

Debtor asserts that the Notice of Mortgage Payment Change was not anticipated and will required Debtor to file an Amended Plan and Motion to Confirm. Debtor states she will file an Amended Plan and set it for confirmation hearing on October 21, 2014.

Discussions

Debtor has not filed an Amended Plan nor set it for confirmation. Further, on August 29, 2014, Wells Fargo Bank, N.A. filed another Notice of

Mortgage Payment Change. Debtor should ensure the most recent information will be incorporated into any efforts to propose and confirm an Amended Plan.

As it stands, without an Amended Plan on file, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtor is in material default under section 5.03 of the plan as the plan will be completed in 46 months opposed to the proposed 36 months. Debtors have completed 18 months of the confirmed 36 month plan. The plan payment net of Class 1 monthly contract installment and Trustee fees is \$240.09. The remaining amount to be paid to creditors is \$6,567.71.

Debtor was provided a Notice of File Claims on August 20, 2014 which indicated that a Motion to Modify was required.

Debtors' Response

Debtors concur with the Trustee's objection and request the court allow for a stipulation to extend the number of months to complete the plan or permit Debtors to file a modified plan.

Discussion

There was nothing restraining Debtors from filing a Modified Plan

and Motion to Confirm prior to or after the filing of the Trustee's Motion to Dismiss. In fact, Debtors were on alert that a modified plan was needed when Trustee filed the Notice of Filed Claims on August 20, 2013, over a year ago. Debtors have not filed an Amended Plan curing the material default and are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. §§ 1307(c)(1) & (6).

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

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

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

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

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

53. [14-27180](#)-C-13 ESMAEL SHAHGHADAMI
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-14-14 [[20](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 11, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

Debtors are delinquent \$128.00 in plan payments to the Trustee to date and the next scheduled payment of \$128.00 is due on August 25, 2014. Debtors have paid \$384.00 into the plan to date. 11 U.S.C. § 1325(a)(6).

Debtors have not filed a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on June 10, 2014. Debtor offers no explanation for the delay in setting the Plan for confirmation.

Debtors' Opposition

Debtors have submitted plan payment receipts, showing that they are now current under the plan. Debtors also state that they are willing to voluntarily convert the case to Chapter 7, and will file a motion to convert.

Discussion

Although the Debtors are now current on their plan payments, the Trustee's second objection remains unresolved. Debtors filed an amended plan on April 18, 2014. However, a review of the docket shows that the Debtors have not filed a Motion to Confirm a Plan. In addition, although the Debtors have stated that they intend to voluntarily convert the case to Chapter 7, they have not filed a Motion to Convert. This constitutes unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee moves to dismiss based on the following grounds:

1. Debtor has not filed an amended plan or Motion to Confirm a Plan following the court's denial of confirmation of Debtor's prior plan on July 1, 2014.
2. Debtor cannot make the plan payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's motion to value the secured claim of Specialized Loan Servicing, LLC was denied on July 29, 2014. No subsequent Motion to Value Collateral has been filed.

Discussion

The case was filed on April 26, 2014. A review of the docket shows that the Trustee's Objection to Confirmation of Plan was sustained on July 1, 2014. The Debtor is yet to file an amended plan or a Motion to Confirm a Plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This constitutes unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). Therefore, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 13, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss without prejudice.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor's plan was filed on June 13, 2014 and has not been served on all interest parties and no Motion to Confirm is pending. A confirmation hearing is normally to be held not later than 45 days after the first meeting of creditors unless the court determines it should be held sooner. 11 U.S.C. § 1324.
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).

Debtors' Opposition

Debtors state that they filed a Motion to Modify Plan in this Chapter 13 case on August 26, 2014. They further state that on the same date, they submitted a copy of their IRS tax return to the Trustee via

email. The delay was caused due to Debtors' illness.

Discussion

A review of the docket shows that Debtors filed a Modified Plan on August 27, 2014, and a Motion to Confirm Plan on August 26, 2014. Thus, the Trustee's first objection has been resolved. The Debtors have submitted a copy of their federal tax return to the Trustee. Moreover, Debtors filed a Motion to Value Collateral on August 26, 2014. The Court is persuaded that the Debtors are adequately prosecuting their Chapter 13 case. The motion is denied.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 8, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The court's decision is to deny the Motion to Dismiss without prejudice.

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor is \$1,100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,100.00 is due on August 25, 2014. Debtor has paid \$9,500.00 into the plan to date.
2. Debtors filed their case on November 27, 2013 and have yet to confirm a plan. Debtors' Motion to Confirm was heard and denied at the hearing on July 1, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

Debtor's Opposition

Debtor filed an Amended Plan and Motion to Modify on August 22, 2014. Debtor asserts that her delinquency is cured by the proposed plan.

The court notes that the docket does reflect that an Amended Plan and concurrent Motion to Confirm were filed on August 19, 2014. The court is satisfied that Debtor is prosecuting her chapter 13 case and does not find,

at this time, that cause exists to dismiss this case. The motion is denied without prejudice.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtors filed their case on April 26, 2014 and have yet to confirm a plan. The Trustee's Objection to Confirmation was heard and denied at the hearing on July 1, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 6, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on July 24, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
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 is \$250.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$250.00 is due on August 25, 2014. Debtor has paid \$0.00 into the plan to date.
4. Debtor has not set a confirmation date. A confirmation hearing is required to be held not earlier than 20 days and not later than 45 days after the meeting of creditors. 11 U.S.C. § 1324.

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 18, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case because Debtors filed their case on April 26, 2014 and have yet to confirm a plan. Trustees Objection to Confirmation was heard and sustained at the hearing on July 1, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 27, 2014. Fourteen days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtors are \$6,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,000.00 is due on September 25, 2014. Debtor has paid \$5,800.00 into the plan to date.
2. Debtors filed their case on February 1, 2014 and have yet to confirm a plan. Debtors' Motion to Confirm was heard and denied at the hearing on August 19, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

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

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

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

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

62. [14-27196](#)-C-13 JENNIFER SALAZAR
Jared A. Day

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
8-18-14 [[34](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 13, 2014). The Docket does not reflect payment of the fee.

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

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

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

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

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

IT IS ORDERED that the Order to Show Cause
is sustained, no sanctions are ordered, and
the case is dismissed.

63. [14-26897](#)-C-13 RENATO/EVA BERNARDES
DPC-1 James L. Bianchi

MOTION TO DISMISS CASE
8-19-14 [[25](#)]

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

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