

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

December 4, 2013 at 10:00 a.m.

1. [12-22801](#)-C-13 SUK KIM MOTION TO DISMISS CASE
NLE-2 C. Anthony Hughes 11-6-13 [[83](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

2. [13-32814](#)-C-13 JESSIE PAJKOS-GARDNER AND ORDER TO SHOW CAUSE - FAILURE
CRYSTAL PAJKOS TO PAY FEES
Mikalah R. Liviakis 11-5-13 [[18](#)]

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 October 31, 2013). The court docket reflects that on November 7, 2011, 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 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.

3. [13-30717](#)-C-13 WAYNE SMALLWOOD
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-29-13 [[52](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$127.00 due on October 15, 2013). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based. The Debtor made a partial payment of \$51.00 on October 17, 2013, but has yet to pay the \$127.00 in installment payments that remain due.

The Debtor is advised that regardless of the conversion of his case from a Chapter 7 to Chapter 13 case, Debtor is obligated to pay the Chapter 7 filing fees in full.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on November 6, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is 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."

Debtor did not provide for the priority claim of the Franchise Tax Board (Court Claim No. 30), of which \$120.00 has been ordered as priority by the court (Dckt. No. #71). The exclusion of the priority claim constitutes a violation of §3.18 of the Plan.

According to Trustee's calculations, the Plan will complete in 67 months, as opposed to the proposed 60 months. This span of time exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The allowed priority claim of the Internal Revenue Service was \$7,301.55 greater than scheduled in the plan.

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

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

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

The Motion to Dismiss the Chapter 13 case filed by

the Chapter 13 Trustee having been presented to the court,
and upon review of the pleadings, evidence, arguments of
counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted.

5. [11-49331](#)-C-13 RONALD ROJO MOTION TO DISMISS CASE
NLE-1 Mitchell L. Abdallah 11-6-13 [[115](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

6. [13-32432](#)-C-13 JEFFREY/RACHELLE FILER ORDER TO SHOW CAUSE - FAILURE
Dale A. Orthner TO PAY FEES
10-29-13 [[20](#)]

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 October 24, 2013). The court docket reflects that on November 22, 2013, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

7. [11-39435](#)-C-13 MANUEL/KERI NUNEZ MOTION TO DISMISS CASE
NLE-1 C. Anthony Hughes 11-6-13 [[95](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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 withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

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

8. [13-28836](#)-C-13 JAMES/MASMOUMEH KENNEDY MOTION TO DISMISS CASE
TSB-1 Eric W. Vandermeij 11-19-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on November 19, 2013. 14 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtors are \$2,433.00 delinquent in plan payments, and the next scheduled payment of \$2,433.00 is due on November 25, 2013. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Debtors filed this case originally, as a Chapter 7, on June 30, 2013. Debtors then converted the case to Chapter 13 on September 30, 2013. Based on the terms of Debtors' Chapter 13 Plan, Debtor's first Plan payment of \$2,433.00 was due on October 25, 2013. Section 2.08(b) of Debtors' Plan states that "Trustee shall maintain all payments falling due after the filing of the case to the holder of each Class 1 Claim." In the instant case, Debtors' ongoing mortgage to Creditor Freedom Mortgage Company is in Class 1, with an ongoing monthly contract installment of \$1,823.00 (Dckt. No. 29).

Debtors are not only delinquent under their Chapter 13 Plan payments, but may also be post-petition delinquent to their mortgage company, as the petition was filed on June 30, 2013. Plan calls for Trustee to make the ongoing mortgage payments to the Class 1 creditor; however, Trustee has not been able to disburse funds to Creditor, as the October 2013 payment was not made and no payments were made to Trustee during the prior between the Chapter 7 filing and conversion to Chapter 13. Debtors have not supplied any evidence regarding whether payments were made on the mortgage during the pendency of the Chapter 7. If the payments were not made, there

would be approximately 3 to 4 months of post-petition delinquency that the Chapter 13 Plan does not address. If the Chapter 13 Plan is accurate as to the ongoing monthly mortgage payment of \$1,823.00, Debtor could be approximately \$5,469.00 to \$7,292.00 in post-petition delinquency to the mortgage creditor.

Moreover, Debtor provided Trustee with an incomplete copy of Debtors' 2012 tax return. Debtor provided the incomplete copy by email on November 12, 2013, 5 days after the First Meeting of Creditors was held and concluded on November 7, 2013. Debtor did not provide page 1 of James Kennedy's 2012 Federal Income Tax Return. This is required seven days before the date first set for the meeting of creditors, pursuant to 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.

9. [13-31439](#)-C-13 DALVON BOLDS ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
11-4-13 [[35](#)]
CASE DISMISSED 11/14/13

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay an installment fee of \$70.00, due on October 29, 2013. The court docket reflects that on November 14, 2013, the Debtor's case was dismissed for unreasonably delay prejudicial to creditors and Debtor's delinquency in making the plan payments.

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

The case having been previously 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, 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 and no sanctions are ordered.

10. [13-31739](#)-C-13 RODERICK DEAL MOTION TO DISMISS CASE
TSB-1 W. Scott de Bie 11-12-13 [[28](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

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

A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of

Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

11. [13-32566](#)-C-13 MICHAEL EGAN MOTION TO DISMISS CASE
DPC-1 Pro Se 10-23-13 [[18](#)]
CASE DISMISSED 11/18/13

Final Ruling: The case having previously been dismissed, Trustee's Motion to Dismiss Case is denied as moot. Debtor's case was dismissed on November 18, 2013, for Debtor's failure to file timely documents.

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 Case 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 denied as moot, the case having already been dismissed.

12. [13-32871](#)-C-13 LYNETTE LEWIS
DPC-1 Pro Se
CASE DISMISSED 11/4/13

MOTION TO DISMISS CASE
10-23-13 [[18](#)]

Final Ruling: The case having previously been dismissed, Trustee's Motion to Dismiss Case is denied as moot. Debtor's case was dismissed on November 4, 2013, for Debtor's failure to file timely documents.

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 Case 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 denied as moot, the case having already been dismissed.

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 November 12, 2013. 14 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is \$3,220.00 delinquent in plan payments to date, and the next scheduled payment of \$4,120.00 is due on November 25, 2013. Debtor's Plan calls for one payment of \$250.00, 13 payments of \$3,220.00 per month and 40 plan payments in the amount of \$4,120.00 per month. The case was filed on August 29, 2013, and § 1.01 of the Plan calls for payments to be received by Trustee not later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$250.00 into the Plan to date. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

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

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

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

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

IT IS ORDERED that the Motion to Dismiss is granted.

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14. [13-32881](#)-C-13 JACK LEE
DPC-1 Pro Se

MOTION TO DISMISS CASE
10-23-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on October 23, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee filed a Motion to Dismiss based on the Debtor's failure to file:

- Form 22C
- Schedule(s): A-J
- Statement of Financial Affairs
- Statistical Summary
- Summary of Schedules

The case may be dismissed under the "automatic dismissal" provision of 11 U.S.C. § 521(I), upon entry of an order by the court, if Debtor does not file these documents 45 days after the date of the filing of this petition, which in this case is November 17, 2013.

Moreover, Debtor has not filed a Chapter 13 Plan, which gives rise to cause for dismissal pursuant to 11 U.S.C. § 1307(c)(3). Debtor inability to file and set a proposed plan for confirmation is also causing unreasonable delay which is prejudicial to creditors under 11 U.S.C. §1307(c)(1).

Thus, 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.

15. [13-30782](#)-C-13 MICHAEL/PAULA NEHER ORDER TO SHOW CAUSE - FAILURE
Thru #16 Pro Se TO PAY FEES
10-30-13 [[27](#)]

Tentative 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 on October 22, 2013). The court docket reflects that the Debtors still have not paid the fees upon which the Order to Show Cause was based. The court docket shows that Debtors have still yet to pay the \$30.00, which was due upon their filing of an Amended Schedule E.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*) and Office of the United States Trustee on November 6, 2013. 28 days' notice is required. That requirement was met.

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

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

The Trustee states that Debtors have not filed credit counseling certificates. The Bankruptcy Code requires that the credit counseling course be taken within the 180-day period ending on the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Additionally, FRBP Rule 1007(b)(3) requires that unless the United States Trustee has determined that the credit counseling requirement of 11 U.S.C. § 109 does not apply in the district, the individual debtor must file the certificate and debt repayment plan. Debtors have not shown that an exception from the requirement applies or otherwise explained the failure to comply with the requirement.

Additionally, Trustee asserts that Debtor has yet to confirm a Plan. This case was filed on August 16, 2013. Debtors filed an Amended Plan on October 22, 2013, and has not yet filed a Motion to Confirm the Amended Plan, which is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1). A review of the docket shows, however, that Debtors filed a Motion to Confirm the Amended Plan on November 18, 2013. Therefore, this part of Trustee's Motion has been resolved.

Debtors' Opposition to Motion to Dismiss, filed November 12, 2013

Debtors state that they filed copies of their Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management on September 27, 2013, a copy which was attached in their response, for each Debtor. Debtors also stated their intention to file a Motion to Confirm Plan, which has in fact been filed.

Trustee's Reply to Debtors' Opposition to Motion to Dismiss Case

Trustee states that Debtors have not resolved the instant Motion to Dismiss. Debtors have not filed pre-filing credit counseling certificates.

Thus, Debtors may not be eligible debtors under 11 U.S.C. § 109(h). The petition was filed on August 16, 2013, along with Debtors Statements of Compliance with Credit Counseling forms Dckt. No. 1, pages 5 and 7).

For Debtor Michael Neher, box 4 of the Compliance with Credit Counseling Form is checked off as to incapacity. For Debtor Paula Neher, box 3 is checked off, stating "I need to file this Petition immediately as a sale date is set for August 22, 2013 under the foreclosure..." Trustee's search of the court docket reveals that the Credit Counseling Certificate for Paula Neher has not been filed with the court to date.

Debtor states that a Certification of Completion of Post-petition Instructional Course Concerning Personal Financial Management was filed on September 27, 2013. Debtors did not file a pre-filing credit counseling certificate, but rather certificates of completion for their personal financial management courses, with no claim of incapacity raised by either Debtor in conjunction with this requirement.

Motion Deficiencies

Furthermore, Debtors' Motion to Confirm does not comply with FRBP 9013 because it does not plead with particularity the grounds upon which the requested relief is based. In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court held that in order for a complaint to survive a motion to dismiss, it must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." Debtor's Motion to Confirm the Amended Plan gives a brief summary of the plan, and then alleges no significant factual matters under 11 U.S.C. § 1325(a)(1)-(0).

Additionally, Debtors neither provided a declaration in support of the Motion to Confirm Plan (supplying required factual evidence of Debtors' ability to make the plan payments, what is being provided to creditors in the case, and Debtors' assets), nor provided a notice of the confirmation hearing date. Debtors did not serve all of their creditors, according to their Proof of Service to the motion, filed on November 18, 2013, which indicates that only the Chapter 13 Trustee (and no other creditors) were noticed.

Debtors' Amended Plan

Trustee also maintains that the Amended Plan filed on October 22, 2013, is not confirmable. Trustee has the following objections to Debtor's most recent plan on file:

- Debtors' Plan does not represent their best efforts, under 11 U.S.C. § 1325(b). Debtors are over median income and propose plan payments of \$2,793.00 for 60 months, with a 0% dividend to unsecured creditors. Form B22C Line #59 indicates that Debtor has monthly disposable income of \$7,970.00 for 60 months, so that the unsecured creditors would instead be entitled to \$478,200.00. Debtors' monthly net income is \$4,454.00, and Debtors are proposing a plan payment of \$2,793.00. Debtors' Amended Schedule I reflect monthly income of \$8,681.00. Debtors' Schedule J reflects monthly expenses of \$4,227.00, which leaves \$4,454.00 in monthly net income.
- Debtors list Wells Fargo to be paid in Class 4, but Debtors have not listed these debts on Schedule D, and Trustee is not certain if

debts are properly classified in the Plan.

- Debtors' Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors have not exempted all the assets listed on Schedule B, which total \$14,580.00, and Debtors are proposing a 0% dividend to unsecured creditors.
- Debtors cannot make all payments required under 11 U.S.C. § 1325(a)(6). Debtor list the mortgage payment to Wells Fargo in Class 1 in the amount of \$1,048.72; however, Debtors also list a mortgage payment of \$1,700 on Schedule J. Debtors are causing an unreasonably delay to creditors in this case.

Based on Trustee's ongoing concerns, 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.

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case before the opposing party served opposition, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, 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 withdrawn its motion to dismiss pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7014, good cause appearing,

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