

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

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

1. [12-24206](#)-C-13 DARREN/DANNA LADD MOTION TO DISMISS CASE
TSB-3 W. Steven Shumway 2-14-14 [[95](#)]

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 February 14, 2014. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Dismiss and not dismiss the case. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves to Dismiss Debtors' Bankruptcy Case because Debtors are delinquent \$1,365 under the terms of the plan confirmed on July 4, 2012 and the next scheduled payment of \$500.00 is due on February 25, 2014. Debtors have paid a total of \$9,635 to the Trustee with the last payment of \$385.00 posted on February 3, 2014. It appears Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6).

Debtors' Opposition

Debtors' state that Mr. Ladd was out of work on a disability claim for several months and the benefits from the claim were less than his normal take-home pay; causing Debtors to fall behind on plan payments.

Debtors surrendered their 2005 Chevrolet Suburban to Sierra Central Credit Union and attempted to lower their payments under a modified plan. Debtors have filed a modified plan that is set for hearing on April 29, 2015 and it proposes to cure the delinquency in the current plan.

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

Discussion

On February 11, 2014, the court denied a Motion to Modify Debtor's Chapter 13 Plan based on the following:

1. Debtors proposed to reclassify Sierra Central Credit Union from Class 2 to Class 3 with the surrender of a 2005 Chevrolet Suburban. Debtors' plan did not authorize payments made by the Trustee to date.

A court order valuing the secured claim of Sierra Central at \$10,500 was entered on August 28, 2012. The value of the collateral securing the claim was determined to be \$10,500. On March 16, 2012 (Claim 3) Sierra Central filed a proof of claim reflecting an interest totaling \$12,478.70. Trustee asserted that Debtor had not vacated the order so to entitle Sierra Central to an unsecured claim.

2. Debtors' modified plan proposes a plan payment of \$9,250.00 total paid through January 6, 2014, then \$385.00 per month beginning January 25, 2014 for 39 months. Debtors' plan payment under the confirmed plan is \$500.00 per month for 60 months.

Debtors' current budget reflects that Debtors' average monthly income remains at \$6,385.84, while expenses have increased by \$5.00 due to the increase in Debtors' homeowners insurance, for a total of \$5,890.35. This leaves a total net income of \$495.49. Debtors are proposing a monthly plan payment of \$385.00.

While Debtor is proposing a 100% plan, a reduction in the plan payment to an amount below Debtors' available disposable income resulting in creditors being paid later rather than sooner is not in the creditors best interest, nor does it reflect best effort on behalf of the Debtor.

3. Debtors' Plan will complete in more than the 60 months proposed, possibly taking 84 months, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). The later date of Plan's completion appears to be due to the proposed increase in the percentage of unsecured creditors from 0% to 100%.
4. Debtor's current budget filed as an Exhibit was not filed using Official Form B 6I and BJ effective December 2013.

The newly filed amended plan referenced in Debtors' opposition to Trustee's Motion to Dismiss makes substantive changes in response to Trustee's previous concerns. Specifically, the recently filed plan authorizes disbursement to Sierra Central in Section 6 and increases plan payments to \$500.00 per month for thirty-six months, commencing April 25, 2014. Debtors filed current budget data on the new Official Forms B6I and B6J (Dkt. 108). These documents reflect net monthly income of \$500.49 per month. Through March 4, 2014, Debtors have paid \$10,000 into their Chapter 13 plan and Debtors are making an effort to correct previous deficiencies that arose as a result of Mr. Ladd being out of work on a disability claim. The court is persuaded that Debtors' are attempting to modify their plan in good faith and, at this time, do not find cause to dismiss the case.

The court's decision is to deny the Motion to Dismiss without prejudice and permit the case 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 and the case is not dismissed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 14, 2014. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtors are in material default pursuant to Section 5.03 of the plan, which provides:

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.

Section 5.03. Trustee calculates that Debtors plan will complete in 89 months, as opposed to 60. The Class 1 arrears claim was \$29,782.74 greater than the amount scheduled. The plan payment, net of Trustee fees, is approximately \$4,439.35. A total of \$2,726.92 is paid as the monthly contract installment, leaving approximately \$1,712.43 for other claims. A total of \$102,180.32 remains to be paid on the Class 1 arrears claim and \$20,934.87 remains to be paid to unsecured creditors. This results in 72 months remaining and Debtors have completed 17 months of the plan. Debtors were provided with a Notice of File Claims on March 27, 2013, which indicated that a Motion to Modify was required.

Pursuant to 11 U.S.C. § 1322(d), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

3. [14-20406](#)-C-13 KAREN WHIGHAM
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-24-14 [[21](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on February 18, 2014). The court docket does not reflect that the fee has been paid.

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

The fees not having been paid, the order to show cause is sustained and the case is dismissed.

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

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

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

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

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.

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 February 19, 2014. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that Trustee's Objection to Confirmation was heard and sustained on December 10, 2013. Debtor has not subsequently filed an amended plan or motion to confirm.

Pursuant to 11 U.S.C. § 1307(c), by not adequately prosecuting this case, Debtor is causing unreasonably delay that is prejudicial to creditors. The court finds that cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*Pro Se*), and Office of the United States Trustee on January 29, 2014. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on January 23, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$394.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$394.00 is due on February 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).

As outlined by the Trustee, cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 26, 2014. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is causing unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c). Trustee's Objection to Confirmation was heard and sustained on December 17, 2013. To date, Debtor has not filed an amended plan with a motion to confirm.

A review of the docket confirms that Debtor has not filed an amended plan with a motion to confirm. Pursuant to 11 U.S.C. § 1307(c), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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 February 18, 2014). The court docket reflects that Debtor has not paid the fee.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on March 3, 2014. 28 days' notice is required. That requirement was met.

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

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

The Trustee seeks dismissal of the case on the basis that the Debtor is in material default with respect to the term of a confirmed plan. 11 U.S.C. § 1307(c)(6). To date, Debtor has paid a total of \$16,650 into the plan, with the last payment received on September 4, 2013. Trustee shows a total of \$23,125 due, making Debtor \$6,475 delinquent in plan payments.

Debtor's Response

Debtor states that he has no opposition to the case being dismissed without prejudice.

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
without prejudice.

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

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 February 18, 2014. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor has not correctly used the Chapter 13 Plan standard form. Local Rule 3015-1(a) states that the mandatory form plan EDC 3-080 shall be used as the standard form.
2. Debtor did not appear at the First Meeting of Creditors held on February 13, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
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).

Pursuant to the sections outlined by Trustee, 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.

11. [13-34922](#)-C-13 ANGELICA IRWIN
Thru #12 Jared A. Day

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-25-14 [[31](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required installment fees in this case (\$70.00 due on February 20, 2014). The court docket reflects that the fee was not paid.

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

The fees that formed the basis of the order to show cause were not paid. Therefore, cause exists to sustain the order to show cause and dismiss the 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 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 and the case is dismissed.

12. [13-34922](#)-C-13 ANGELICA IRWIN
TSB-1 Jared A. Day

MOTION TO DISMISS CASE
2-26-14 [[32](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on August 6, 2013, 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. [12-34323](#)-C-13 MICHAEL WILSON AND BROOKE MOTION TO DISMISS CASE
TSB-2 HENNESSY 2-14-14 [[40](#)]
Pro Se

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 (*Pro Se*), and Office of the United States Trustee on February 14, 2014. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Dismiss and not 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 in material default pursuant to Section 5.03 of the plan, which provides:

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.

Section 5.03. Trustee calculates that Debtors plan will complete in 166 months, as opposed to 60, exceeding the maximum amount of time permitted under 11 U.S.C. § 1322(d). The plan payment, net of Trustee fees, is approximately \$1,281.22. The monthly Class 1 contract installment is \$1,238.71, leaving approximately \$42.51 to pay other claims. The remaining filed secured and priority claims to be paid through the plan total \$6,297.84, resulting in a plan term of 149 when that figure is divided by \$42.51. Debtors have completed 17 months of the plan. Debtors were provided with a Notice of File Claims on March 20, 2013, which indicated that a Motion to Modify was required.

Debtors' Opposition

Debtors filed an amended plan on March 4, 2014. Debtors assert that the plan will complete within 60 months. It provides for payment for the remaining 42 months at \$1,474.05, which will adequately pay the filed secured and priority claims. Debtors filed amended Schedules I and J to reflect current income and expenditures.

Confirmation of Debtors' amended plan is set for hearing on April 22, 2014 (Dkt. 48). Debtors have amended the plan to bring it within the Code's

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

Page 18 of 62

term limitations by increasing plan payments based on adjusted Schedules I & J. The court's decision is to deny Trustee's Motion to Dismiss as Debtors are sufficiently prosecuting their Chapter 13 case and cause does not exist to dismiss at this time.

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 and the case is not dismissed.

14. [13-36129](#)-C-13 ALVIN TABIOS
DPC-1 Pro Se

MOTION TO DISMISS CASE
1-29-14 [[21](#)]

CASE DISMISSED 2/24/14

Final Ruling: The case having previously been dismissed on February 24, 2014, the Motion 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 Confirm Plan 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.

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.

16. [13-34338](#)-C-13 JESSICA RAMSEY
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-11-14 [[44](#)]

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 February 6, 2014). The court docket reflects that the final installment fee was paid on February 28, 2014.

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

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

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

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

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

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

Local Rule 9014-1(f)(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 January 29, 2014. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on January 23, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$2,713.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,713.00 is due on February 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.

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

Page 23 of 62

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.

18. [14-20042](#)-C-13 ANGELICA PASCUAL
Thru #19 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-6-14 [[23](#)]

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 February 3, 2014). The court docket reflects that the fee was not 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 fees that formed the basis of the order to show cause were not paid. However, the court dismissed debtors case as a result of Trustee's Motion to Dismiss (Dkt. 29) on March 19, 2014. Therefore, this 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.

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 February 26, 2014. 28 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on February 20, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$125.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$125.00 is due on March 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).
5. Debtor's Chapter 13 documents are incomplete and Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).
 - a. Debtor has not used the Chapter 13 Plan standard form (EDC 3-080 required by LBR 3015-1(1)).
 - b. Schedule J lists Debtor's net income as (\$182.38) and also lists an auto-expense in the amount of \$410.00. No information regarding the auto-expense was included on

- Schedule D.
- c. It is not clear why property located at 3328 Tualatin Way, Gold River, California is listed on Schedules A & D with a value of \$0.00.
 - d. Class 4 of the Plan lists Ocwen Mortgage and Class 1 of the plan lists American Mortgage while Schedule D lists only American Mortgage.
 - e. It does not appear and changes were made to Schedules A-E and Schedules I & J from Debtor's previous bankruptcy filing (12-32059). The previous case was dismissed September 11, 2012.
 - f. The Statement of Financial Affairs is incomplete, as Debtors lists income in question one from 2012 and provides no other information in the entire document.

Debtor is not prosecuting her Chapter 13 case and, based on the foregoing, the court finds that cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (*pro se*) and Office of the United States Trustee on January 29, 2014. By the court's calculation, 49 days' notice was provided. 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.

Debtors have not filed a Chapter 13 Plan since filing their petition in December 30, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, Trustee states that Debtors have not filed all of the necessary documents in their bankruptcy case. If individual debtors in a voluntary case under chapter 7 or 13 fail to file all of the information required under Section 521(a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition. 11 U.S.C. § 521. Debtors have still not filed the following:

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

A review of the docket shows that these documents have still yet to be filed. The 45-day period established by 11 U.S.C. § 521 has passed. Debtors must also be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

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.

21. [14-20052](#)-C-13 MELANIE HIRSCH
Thru #22 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-7-14 [[20](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$70.00 due on February 3, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based and fees that have subsequently become due remain unpaid.

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

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

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

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

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

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

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 February 26, 2014. By the court's calculation, 21 days' notice was provided. 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 \$331.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$331.00 is due on March 25, 2015. The case was filed on January 3, 2014. Debtor has paid \$0.00 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).

Second, Debtor has not provided Trustee with a tax transcript or copy of her 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 documentation exists under 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).

Third, Debtor admitted at the Meeting of Creditors held on February 20, 2014, that she has not filed her tax returns during the 4-year period preceding the filing of the Petition. Filing of the return is required. 11 U.S.C. § 1308. Debtor's failure to file the return is grounds to dismiss the case. 11 U.S.C. § 1307(e).

Fourth, Debtor has not correctly utilized the Chapter 13 Standard Form. Local Bankruptcy Rule 3015-1(a) states that the mandatory form plan EDC 3-080 shall be utilized as the standard form. The form EDC-3-080-12 became effective on May 1, 2012. Debtor filed a plan using the EDC 3-080 on

January 17, 2014. Dckt. No. 13.

Fifth, Debtor's Chapter 13 documents are not complete, and Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor admitted at the First Meeting of Creditors held on February 20, 2014, that her spouse is a self-employed contractor, and his gross income is approximately \$3,000 per month. Debtor did not list this income on Schedule I and Form B22C.

Debtor also admitted at the Meeting that she has two dependents, ages 12 and 17; her Schedule J does not list any dependents. Schedule J lists Debtors' net income as \$250.00. Debtors' plan calls for payments in the amount of \$331.00 per month for 36 months. Additionally, Debtor has not filed a complete Statement of Financial Affairs.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 3, 2014. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on January 30, 2014. The Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3).
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor is \$224.67 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$224.67 is due on February 25, 2014. Debtor has paid \$0.00 into the plan to date.

FEBRUARY 19, 2014 HEARING

At the February 19, 2014 hearing on this Motion, Counsel for the Debtor and his spouse stated that the Debtor's grandson is to assist financially and could possibly serve as a personal representative. Further, the Debtor having obtained a reverse mortgage, there appears to be a substantial amount of future interest which has been paid and would be lost if the Debtor does not prosecute a feasible plan.

Before dismissing the case, the court continued the case to allow Debtor the opportunity to further prosecute this case. Civil Minutes, Dckt. No. 60. It appears that Debtor's Counsel appeared at the 11 U.S.C. § 341 Meeting of Creditors on February 27, 2014, and the Meeting was concluded as to Debtor. On March 3, 2014, the court sustained Creditor OneWest Bank, FSB's objection to confirmation of Debtor's Plan. Dckt. No. 69.

To date, Debtor has not filed a response addressing Trustee's concerns regarding the lack of tax transcripts and income tax documentation to determine whether the Plan is suitable for confirmation, and whether Debtor is now current on his plan payments. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

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

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 March 3, 2014. By the court's calculation, 16 days' notice was provided. 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:

Debtor is in material default with respect to the terms of the confirmed plan, pursuant to 11 U.S.C. § 1307(c)(6). To date, Debtors have paid a total of \$76,312.00, with the last payment received on January 28, 2014. Trustee's records shows that a total of \$92,880.00 is due, so Debtors are delinquent \$16,568.00 in plan payments. Debtor's monthly payment is \$4,782.00.

Before the hearing on this matter, another payment of \$4,782.00 will become due. Debtors will need to pay \$21,350.00, in order to bring this plan current by the date of the hearing. Debtors must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

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,

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

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 13, 2014. By the court's calculation, 34 days' notice was provided. 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.

Debtor is delinquent in \$3,830.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,045.00 is due on February 25, 2014. Debtor has paid \$1,250.00 into the plan to date. Debtor has paid \$1,250.00 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).

The Debtor's Motion to Confirm, PGM-3, was heard and denied on January 14, 2014. To date, Debtor has failed to file an Amended Plan and set it for confirmation. Debtor has not filed a response, or filed a proposed or any amended plan no later than March 5, 2014, as Trustee requested. Debtor offers no explanation for the delay in setting the Plan for confirmation. This 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,

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

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 14, 2014. By the court's calculation, 36 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Dismiss 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:

Trustee states that Debtor is in material default pursuant to Section 5.03 of the plan, which provides that if Debtor defaults under the plan, or if the plan is not completed 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 157 months, as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). It appears that Debtor intended to obtain a loan modification from Class 1 Creditor Bank of America, per the Additional Provisions of the Plan confirmed on October 16, 2013. Trustee states that the Debtor has not provided any evidence of loan modifications.

The creditor on the loan filed a claim on December 5, 2012, Court Claim #7-1, indicating that the Debtor was \$66,710.56 in arrears at the time of filing. The Creditor has not amended or withdrawn its claim. The claim was transferred to U.S. Bank, N.A., Dckt. Nos. 140-143. Creditor filed a Notice of Mortgage Payment Change on January 27, 2014, indicating the new monthly payment would be \$2,644.74, effective on April 1, 2014. Debtor has not objected to the Notice of Mortgage payment change. Trustee has been making a monthly adequate protection payment of \$900.00 according to the terms of the confirmed plan; Trustee has made no payments on the \$66,710.57 arrearage. It appears that Debtor has not obtained a loan modification, and the plan is overextended when the arrears are included.

Debtor's Opposition

Debtor states that she has not missed any payments pursuant to the confirmed plan which is now in its (18) eighteenth month. The Trustee has paid \$15,635.00 to the Class 1 Creditor thus far; the Class 1 Creditor did not object to the plan confirmation, and has not sought relief from the automatic stay.

Debtor states that the Class 1 Creditor has not completed processing the Debtor's application for a loan modification. On January 27, 2014, the Class 1 Creditor did file a Notice of Mortgage Payment Change, increasing the (APO) monthly payment required under the confirmed plan. Debtor's counsel has spoken to the Creditor's Counsel, who stated that relief from the stay is not being sought as the loan modification process is pending. Debtor asserts that no cause has been presented in this instance for the relief requested by the Trustee as; as this is an "APO Plan" which by its definition is "over extended" and the loan modification has not been denied/ Debtor states that she is in compliance with the Plan and her payments, and that she is not in breach of the confirmed plan.

DISCUSSION

The Chapter 13 Trustee appears to be moving to dismiss a case on a Plan that has already been confirmed, on the basis that the plan is overextended and that Debtor will be in material default of the plan if Debtor is not successful in obtaining a loan modification with Creditor Bank of America, N.A..

A review of the Plan shows, however, that the confirmed Plan, confirmed by this court on July 23, 2013, lists the amount of arrears on the claim as \$66,170.56. The Additional Provisions of the Plan, in Section 6.03, states that the Creditor, Bank of America, shall be paid \$900.00 in adequate protection payments.

Debtor includes additional "Ensminger" provisions, which, incorporates a series of terms relating to a prospective loan modification into the Chapter 13 Plan. These provisions make it clear that the court is not modifying a claim secured only by the Debtor's residence and a mechanism for addressing the granting or denial of a loan modification. The Plan provides that, upon completion of a loan modification agreement, if any, the Debtor shall provide a copy of the agreement to the Chapter 13 Trustee and file a motion for approval of the loan modification within fourteen (14) days of the agreement being signed by the Debtor and Bank of America. Dckt. No. 125 at 6.

The Plan further provides that, for loan modification which requires arrearage cure payments to be made during the term of the plan, the Claim shall be paid as a Class 1 claim with the current monthly payment and the arrearage cure being paid through the Plan. If the Class 1 payment can be made without altering the treatment provided for creditors holding general unsecured claims, no modification of the plan shall be required, with the court order approving the modification documenting the agreed treatment of the Class 1 claim.

The Plan also addresses the contingency of the denial of the subject loan modification, in which case the Debtor will have fourteen (14) days from the mailing of the denial of the modification to file a modified plan and motion to confirm modified plan to provide for payment of Bank of America. Debtor has sufficiently provided for the possibility that the

modification being negotiated with Bank of America in her Plan will be denied, and the remedies available to Bank of America, N.A. if the Debtor defaults in plan payments. Debtor also acknowledges that Bank of America may conduct a non-judicial foreclosure sale of the property, should the Debtor not file an Amended Plan following the denial of the anticipated loan modification.

Thus, the Motion to Dismiss 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.

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 February 21, 2014. By the court's calculation, 26 days' notice was provided. 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:

Trustee states that Debtors are \$610.00 delinquent in plan payments to the Trustee to date, and that the next scheduled payment of \$610.00 is due on February 25, 2015.

The case was filed on December 10, 2013, and the Plan in Section 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 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 and the case is dismissed.

28. [13-35280](#)-C-13 ALFREDO RODRIGUEZ
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-5-14 [[33](#)]

CASE DISMISSED 2/21/14

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay an installment fee of \$70.00 that had come due on January 31, 2014. The court docket reflects that on February 21, 2014, the Debtor's case was dismissed.

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.

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 March 4, 2014. By the court's calculation, 15 days' notice was provided. 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:

Debtor is \$4,895.38 delinquent in plan payments to Trustee to date, and the next scheduled payment of \$2,447.69 is due on March 25, 2014. Debtor has paid \$0.00 into the plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. 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

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

Page 45 of 62

and the case is 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 Debtors, Debtor's Attorney, and Office of the United States Trustee on February 5, 2014. By the court's calculation, 42 days' notice was provided. 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:

Debtors are \$17,707.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$6,108.00 is due February 25, 2014. The case was filed on March 18, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$43,850.00 into the Plan to date.

Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, this case was filed on March 18, 2013, and Debtor has yet to confirm a Plan. Debtors' Motion to Confirm Amended Plan, ULC-4, was heard and denied on November 19, 2013, and Debtors have filed to amend the Plan and set a confirmation hearing to date. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

A review of the docket, shows that an Amended Plan was filed on March 14, 2014, along with a supplemental Schedule J. Dckt. Nos. 87 and 88. Debtors have not yet filed a Motion to Confirm the Plan. Debtors have also not filed a response to Trustee's Motion to Dismiss, and have not addressed

and resolved Trustee's objection regarding Debtors' delinquency in plan payments.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, and Office of the United States Trustee on February 21, 2014. By the court's calculation, 27 days' notice was provided. 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:

Debtors are \$17,707.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$6,108.00 is due February 25, 2014. The case was filed on March 18, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$43,850.00 into the Plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, this case was filed on March 18, 2013, and Debtor has yet to confirm a Plan. Debtors' Motion to Confirm Amended Plan, ULC-4, was heard and denied on November 19, 2013, and Debtors have filed to amend the Plan and set a confirmation hearing to date. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

A review of the docket, shows that an Amended Plan was filed on March 14, 2014, along with a supplemental Schedule J. Dckt. Nos. 87 and 88. Debtors have not yet filed a Motion to Confirm the Plan. Debtors have also not filed a response to Trustee's Motion to Dismiss, and have not addressed and resolved Trustee's objection regarding Debtors' delinquency in plan

payments.

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.

32. [13-35889](#)-C-13 LA KEISHA MATLOCK
Thru #33 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-24-14 [[51](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$60.00 due on February 18, 2014). The court docket reflects that on February 28, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on February 13, 2014. By the court's calculation, 34 days' notice was provided. 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.

Debtor has not provided Trustee with a tax transcript or copy of her 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 documentation exists under 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). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor is \$972.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$972.00 is due February 25, 2014. The case was filed on December 20, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. 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 and the case is dismissed.

34. [13-33092](#)-C-13 FELIX/LADORA GARCIA
Charnel J. James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-18-14 [[62](#)]

Final Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$76.00 due on February 12, 2014). The court docket reflects that on February 20, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 26, 2014. By the court's calculation, 21 days' notice was provided. 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. 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:

Debtor is causing unreasonable delay that is prejudicial to creditors. Debtor filed this case on August 19, 2013. The First Meeting of Creditors was held and concluded on October 11, 2013. Debtor has not resolved the Trustee's initial best effort objection to confirmation filed on October 15, 2014. Debtor has filed 3 plans since the filing of this case. The First Plan was filed on August 19, 2014, Dckt. No. 7. The second Plan was filed on December 4, 2013, and the third Plan was filed on February 13, 2014, Dckt. Nos. 60 and 73.

The Trustee filed an Objection to Confirmation, NLE-1, of the initial plan on October 15, 2013, raising the following best effort objection:

Best Efforts

The Plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$88.00 for 36 months, with a 0% dividend to unsecured creditors.

Tax Refund: Debtor's 2012 income tax return indicates that Debtor received a tax refund in the amount of \$2,001.00, which is approximately \$166.75 per month, \$78.75 more than Debtor's Chapter 13 plan payment. Debtor's 2011 tax return provided to Trustee indicates that Debtor received a tax refund of \$4,478.00, which is approximately \$373.16 per month. Debtor

has not changed his income tax withholdings so that he will not receive a tax refund in 2013, and Debtor does not propose to pay the tax refunds into the Plan for the duration of the Chapter 13 Bankruptcy.

Recent Car Purchase: Debtor lists a 2004 Chevy Tahoe in Class 4 of the Plan, which states "Co-debtor spouse" makes the auto payment of \$288.00 per month listed on Schedule J. According to the Proof of Claim filed by Santander Consumer USA on August 22, 2013, Debtor incurred this debt 4 months prior to filing this Chapter 13 on April 1, 2013. Debtor is listed as the co-buyer on the contract. The interest rate is 19.10%, and the term of the loan is 59 months. Debtor did not disclose the date of payment to Debtor's attorney on the Statement of Financial Affairs. Co-Debtor spouse did not file the Chapter 13 with Debtor; however, her income is listed on Schedule I at \$846.00 per month. Debtor is choosing to pay it directly, which will result in \$6,198.10 of finance charges (Claim #1, Page 4), or \$103.30 per month. Debtor has not disclosed why the car was purchased and necessary. Debtor appears to reside within six miles of his employment and does not disclose any trade in or other vehicle used.

The Court sustained the Trustee's Objection to Confirmation, NLE-1, on November 19, 2013. Dckt. No. 54. In its ruling, the court stated that,

The court is not satisfied that Debtors Plan represents his best efforts, and finds Trustees arguments regarding the necessity and benefit of paying prior tax refunds and likely future refunds into the Plan to be persuasive.

Debtor filed a Second Plan on December 4, 2013, and set it for hearing on January 28, 2014. Trustee filed an objection to Debtor's Motion to Confirm Amended Plan, MOH-1. Trustee raised the same best effort objection initially raised in Trustee's Objection to Confirmation, NLE-1. The court denied Debtor's Motion to Confirm, MOH-1, on January 28, 2014. Debtor has not filed his third Amended Plan and set it for hearing on April 1, 2014. Debtor's Plan does not resolve Trustee's repeated best effort objection, and remains \$88 per month.

Debtor has amended Schedule I, Dckt. No. 71, to include amortized tax refunds estimated at \$400 monthly, which were not disclosed on the original Schedule I, and Debtor has amended his Schedule J, Dckt. No. 71, and increases his expenses by \$400.00 each month. Debtor has also increased the following expenses on Amended Schedule J without explanation.

Expense/Detail	Original Schedule J	Amended Schedule J	Difference
Home Maintenance	\$20	\$40	+\$20
Food	\$500	\$700	+\$200
Clothing	\$40	\$80	+\$40
Medical and Dental	\$0	\$40	+\$40
Transportation	\$200	\$300	+\$100

Debtor by this amendment has demonstrated that they do not intend to propose a plan paying in any additional funds. They did not disclose the income and when the issue was raised they amended their expenses- showing either they failed to accurately disclose their expenses originally, or that Debtor has increased their expenses subsequent to filing.

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 xxxx 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.

36. [13-35893](#)-C-13 BARRY MCGWIRE
Thru #37 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-24-14 [[35](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$69.75 due on February 18, 2014). The court docket reflects that the Debtor still has not paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

Local Rule 9014-1(f)(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 February 13, 2014. By the court's calculation, 34 days' notice was provided. 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 an order dismissing this case on the following grounds:

1. The Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on February 6, 2014. Attendance is mandatory. 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay which is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1). The meeting has been continued to April 3, 2014 at 10:30 am.
2. Debtor has not provided 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 documentation exists under 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. Debtors has failed to notice all interested parties of the Chapter 13 Plan, and set a confirmation hearing to date. The Notice of Commencement of Case was served without the plan on January 8, 2014 (Dckt. No. 14), and Debtor filed the Plan on January 30, 2014 (Dckt. No. 26). Debtor has failed to set a Motion to Confirm for a hearing. Trustee objected to the January 30, 2014 plan.
4. Debtor is \$50.00 delinquent in plan payments to the Trustee to date,

and the next scheduled payment of \$50.00 is due February 25, 2014. The case was filed on December 20, 2013, and the Plan in § 21.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid \$0.00 into the plan to date. Debtor must be current under all payments called for by and any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

5. The court notes that multiple Orders to Show Cause have been issued for Debtor's failure to timely pay filing fees, pursuant to the order granting Debtor leave to pay the fees in installments. Dckt. No. 7. The most recent Order to Show Cause, for failure to pay an installment fee that has become due, is set for hearing on this date. Dckt. No. 35.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 26, 2015. By the court's calculation, 21 days' notice was provided. 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:

Trustee makes this Motion to Dismiss on three grounds. First, Debtor has not properly prosecuted her case. Debtor's Motion to Confirm, CAH-2, was withdrawn on January 22, 2014. To date, Debtor has not filed an Amended Plan and set it for confirmation.

Second, Debtor has not complied with Trustee's request for documents. On December 10, 2014, January 6, 2014, and January 22, 2014, Trustee requested copies of the 2012 State Tax Return, 8 months of pre-petition bank statements for both Debtor and the non-filing spouse, and a report of all property to be settled from the inheritance received by both Debtor and her non filing spouse. To date, Trustee has not received the requested documents.

Third, Debtor and her counsel did not attend the continued 11 U.S.C. § 341 Meeting held on January 30, 2014. The hearing was continued to February 27, 2014.

The matter was continued pursuant to counsel for Debtor's request, to allow Debtor to supply the documents referenced in #2 of this motion. To date, the documents have not been received, causing Trustee concern about whether Debtor will be appearing at the continued matter on February 27, 2014.

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.