

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

April 16, 2014 at 10:00 a.m.

1. [11-48510](#)-C-13 PAUL SCHRUPP MOTION TO DISMISS CASE
TSB-3 Stephen M. Reynolds 3-14-14 [[72](#)]

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 March 14, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

No 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).

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 for two reasons. First, Debtor's Motion to Confirm, RLC-1, was denied by the court at the hearing held on February 25, 2014, Dckt. No. 71. According to the Reply to Trustee's Opposition, Dckt. No. 67, filed on February 18, 2014, the Debtor "believes that a new Plan is needed and intends to file one prior to the hearing on the present motion." 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).

Debtor is also delinquent \$66,384.25 in plan payments to the Trustee to date, and the next scheduled payment of \$2,985.37 is due on March 25, 2014.

Debtor must be current under all payments called for by 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

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unreasonable delay which is prejudicial to creditors. 11 U.S.C.
§ 1307(c) (1) .

OPPOSITION BY DEBTOR

Debtor responds by stating that Debtor and Debtor's counsel have discussed the need for a new Plan and a supporting motion to confirm. Counsel for Debtor suffered a dental emergency that curtailed counsel's hours in the office during the last two weeks of March.

Debtor states that intends to have a new Plan and motion to confirm on file no later than April 9, 2014, and suggests that this motion be continued to the hearing date of that motion.

A review of the court docket shows, however, that no new Modified Plan has been proposed and filed.

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 ---- .

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 19, 2014. By the court's calculation, 35 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 dismissal of the case for two reasons. Debtors are delinquent \$1,300.00 in plan payments to the Trustee to date, and the next scheduled payment of \$1,300.00 is due on March 25, 2014. The case was filed on October 4, 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. Debtors have paid \$3,900.00 into the Plan to date. Debtors must be current under all payments called for by 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).

The case was filed on October 4, 2013, and Debtors have yet to confirm a plan. Trustee's Objection to Confirmation, NLE-1 was heard and sustained on December 10, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtors offer 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).

Conversion to Chapter 7

On April 3, 2014, the Debtors filed their Notice of Conversion of this case to one under Chapter 7. Dckt. No. 47.

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 April 2, 2014. By the court's calculation, 14 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 asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors for two reasons.

First, Debtor is \$7,815.24 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,963.31 is due on April 25, 2014. The case was filed on August 28, 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 \$5,981.92 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, the case was filed on August 28, 2013, and Debtor has yet to confirm a Plan. Debtor's Motion to Confirm was heard and denied by the court at the hearing held on March 4, 2014. Dckt. No. 78. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

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).

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 March 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 filed a Chapter 13 Plan since the commencement of the case on February 19, 2014. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, Trustee states that Debtor has 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. Debtor still has not filed the following:

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

Debtor applied for an order extending the time to file documents, which was denied on March 6, 2014, by this court because Debtor did not serve the Motion to Extend Deadline to File Schedules on the Chapter 13 Trustee and the United States Trustee pursuant to Federal Rule of Bankruptcy Procedure 1007(c). Dckt. No. 12.

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 (with a deadline of April 6, 2014 in this case) has passed, warranting automatic dismissal of the case. Debtor 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.

5.	<u>14-21628</u> -C-13 MICHAEL ROCHA Mikalah R. Liviakis	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-28-14 [18]
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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 March 24, 2014). The court docket reflects that on April 7, 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 April 2, 2014. By the court's calculation, 14 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's Objection to Confirmation, NLE-1, was heard and sustained by this court at the hearing on January 14, 2014. Dckt. No. 49. Debtor's Motion to Value the Secured Claim of JPMorgan Chase, RPH-1, was withdrawn by the moving party on March 6, 2014. Dckt. No. 54.

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).

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.

7. [13-35335](#)-C-13 DEBRA DUPUIS MOTION TO DISMISS CASE
TSB-2 Scott J. Sagaria 3-14-14 [[32](#)]

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 March 14, 2014. By the court's calculation, 33 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. 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 for two reasons. First, Debtor is \$311.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$311.00 is due on March 25, 2014. Debtor has paid \$311.00 into the plan to date. Debtor has paid \$311.00 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 did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. The Trustee's Objection to Confirmation, NLE-1, was heard and sustained on February 4, 2014.

OPPOSITION BY DEBTOR

Debtor states that she has cured the arrears owed to the Trustee, and offers a printout from 13Network.com, showing that she has made the \$311.00 delinquent payment, and that she is current in payments for the month of March, 2014. Exhibit A, Dckt. No. 38.

A review of the docket also shows that Debtor filed a First Amended Plan, and a motion to confirm the amended plan on April 2, 2014. Dckt. Nos. 39 and 43. The Debtor has resolved Trustee's concerns with Debtor's

delinquency in plan payments, and lack of prosecution of Debtor's case. 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.

8.	<u>11-39238</u> -C-13	JEAN/TAMARA LOUIS Peter G. Macaluso	MOTION TO DISMISS CASE 3-18-14 [<u>61</u>]
	DPC-1		

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

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

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

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

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

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 28, 2014. By the court's calculation, 19 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 asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors under 11 U.S.C. § 1307(c) for two reasons.

First, Debtor is delinquent in \$395.00 in plan payments to Trustee to date, and the next scheduled payment of \$396.00 is due on April 25, 2014. The case was filed on November 7, 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 \$1,185.00 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, the case was filed on November 7, 2013, and Debtor has yet to confirm a Plan. The Debtor's Motion to Confirm Amended Plan, CAH-1, was heard and denied on February 4, 2014, and Debtor has failed to amend the Plan and set a confirmation hearing to date. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

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).

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.

10.	<u>14-20638</u> -C-13	MARK TRIEBWASSER	MOTION TO DISMISS CASE
	DPC-1	Eric John Schwab	3-12-14 [<u>17</u>]

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 12, 2014. By the court's calculation, 35 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 filed a Chapter 13 Plan since the commencement of the case on January 28, 2014. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, Trustee states that Debtor has 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. Debtor still has not filed the following:

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

Debtor applied for an order extending the time to file documents, which was denied on March 11, 2014, by this court because Debtor did not make the requisite showing of why Debtor is entitled to an extension of time to file schedules, statements, and a Chapter 13 Plan, and why cause exists for the court to do so under Federal Rule of Bankruptcy Procedure 1007. Civil Minutes, Dckt. No. 21.

A review of the docket shows that these documents have still yet to be filed. The 45-day period (with a deadline of March 11, 2014 in this case) established by 11 U.S.C. § 521 has passed, warranting automatic dismissal of the case. Debtor 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.

11. [14-20738](#)-C-13 SANDRA REICHELDERFER
Thru #12 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-4-14 [[17](#)]

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 27, 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)(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 March 10, 2014. By the court's calculation, 37 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 filed a Chapter 13 Plan since the commencement of the case on January 28, 2014. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Further, Trustee states that Debtor has 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. Debtor still has not filed the following:

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

Debtor applied for an order extending the time to file documents, which was denied on March 17, 2014, by this court because Debtor did not serve the Motion to Extend Deadline to File Schedules on the Chapter 13 Trustee and the United States Trustee pursuant to Federal Rule of Bankruptcy Procedure 1007(c). Dckt. No. 23.

A review of the docket shows that these documents have still yet to be filed. The 45-day period (with a deadline of March 15, 2014 in this case) established by 11 U.S.C. § 521 has passed, warranting automatic dismissal of the case. Debtor 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 10, 2014. By the court's calculation, 37 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 dismissal of the case on the basis that the Debtors are \$298.00 delinquent in plan payments. The case was filed on April 11, 2013, and the 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. To date, Debtors have paid a total of \$2,682.00 into the Plan.

Additionally, Debtors list Bank of America to be paid as a holder of a Class 4 claim under the plan, paid directly by the Debtors. According to the Motion for Relief, RCO-1 filed by Bank of America, however, Debtors have not made mortgage payments to this creditor for 5 months. Debtors are post-petition delinquent to this creditor in the amount of \$7,735.55 to date. Dckt. No. 82.

Debtors must be current under all payments called for by 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.

14. [14-21340](#)-C-13 NATALIE PELTON
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-20-14 [[22](#)]

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 March 17, 2014). The court docket reflects that on March 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) (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 19, 2014. By the court's calculation, 28 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 dismissal of the case on the basis that the Debtor is \$1,732.02 delinquent in plan payments, and the next scheduled payment of \$1,723.02 is due on March 25, 2014. The case was filed on January 2, 2014, 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 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.

16. [13-32842](#)-C-13 DOYLE ROSS AND KIMBERLY MOTION TO DISMISS CASE
TSB-1 BARNETT 4-2-14 [[62](#)]
Peter G. Macaluso

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 April 2, 2014. By the court's calculation, 14 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 deny the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee's Motion argues that the Debtors did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtors' prior plan, causing an unreasonably delay that is prejudicial to creditors under 11 U.S.C. § 1307(c). Debtor filed an amended plan on January 3, 2014. Dckt. No. 58. Debtors' Motion to Confirm the Plan, PGM-3, was withdrawn by the moving party on February 6, 2014.

A review of the docket shows that Debtors filed a Second Amended Plan, and a Motion to Confirm the Plan on April 9, 2014. Dckt. Nos. 66 and 70. Having resolved Trustee's basis for the Motion to dismiss, the Motion is denied.

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

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

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

IT IS ORDERED that the Motion to Dismiss is denied.

17. [13-33148](#)-C-13 CAROLYN KIRKPATRICK MOTION TO DISMISS CASE
TSB-3 Timothy J. Walsh 4-2-14 [\[35\]](#)

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 April 1, 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 \$7,972.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$4,195.00 is due on April 25, 2014. The Debtor has paid \$13,421.00 into the Plan to date. The Trustee has not received a plan payment since January 28, 2014. 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. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor's Motion to Confirm, TJW-1, was denied by the court at the hearing held on February 25, 2014. Dckt. No. 34. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. 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).

Debtor must be current under all payments called for by 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.

18. [13-33851](#)-C-13 DANNY RUE
Thru #19 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-3-14 [[69](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$71.00 due on February 25, 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, Debtor's Attorney, and Office of the United States Trustee on April 2, 2014. By the court's calculation, 14 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 \$2,823.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$941.00 is due on April 25, 2014. The case was filed on October 28, 2013. 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. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Additionally, Debtor's Motion to Confirm, was denied by the court at the hearing held on February 25, 2014. Dckt. No. 73. The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan. 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).

Debtor must be current under all payments called for by 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 5, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Prior Hearings

The court held a prior hearing on the Motion to Dismiss on February 19, 2014. The court continued the hearing on the Motion to Dismiss to April 1, 2014, to be heard in conjunction with Debtor's Motion to Confirm.

April 1, 2014 Hearing

The Debtor represented at the April 1, 2014 hearing that she was not working, and requested a short continuance to review what plan, if any, could be prosecuted. The court so continued the hearing. Dckt. No. 55.

Chapter 13 Trustee Motion to Dismiss

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

1. Debtor is \$4,000.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,000.00 is due on February 25, 2014. Debtor has paid \$8,000.00 into the plan to date.
2. The case was filed on October 7, 2013 and Debtor has yet to

confirm a plan. The Trustee's Objection to Confirmation (NLE-1) was heard and sustained on December 10, 2013 and Debtor has failed to amend the Plan and set a confirmation hearing date. There is unreasonable delay in filing a new plan.

Debtor filed an amended plan and set a hearing on the Motion to Confirm the plan for April 1, 2014. While Debtor had resolved this portion of the Trustee's Motion, Debtor had not presented evidence that plan payments are also current. Debtor informed the court that the defaults could be resolved upon confirmation of the confirmed plan.

At the hearing on April 1, 2014, the court did not confirm Debtor's Plan because the court lack sufficient information concerning Debtor's ability to make payments and disclosure of income. Nothing further has been filed that addresses Trustee and the court's issues with Debtor's most recent proposed plan. The deficiencies concerning Debtor's case remain and cause exists to 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 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. Debtor filed his petition on March 5, 2014, without payment of the filing fee and other fees prescribed by 28 U.S.C. § 1930(a) and (b) or an application for permission to pay fees in installments pursuant to Federal Rule of Bankruptcy Procedure 1006(b). The amount of the fees due in this case is \$281.00.

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 - 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.

The court notes that Deborah Allen, longtime partner of the Debtor Charles Beyer, who is afflicted with dementia and purportedly cannot prosecute his bankruptcy case on his own, filed a Motion to be appointed as Personal Representative for the Debtor. Dckt. No. 78. Quite possibly, the court's approval of Allen and other proposed parties as next friends or *guardian ad litem*s might give the appointed individuals an opportunity to resolve some of the Trustee and the court's concerns. Nothing has been filed, however, to inform the court that the missing tax documents are forthcoming, or that Debtor will make the required plan payments.

It is not the court's task to raise such defenses for the Debtor, and in doing so assume that Debtor wishes to proceed with the prosecution of his case. As previously noted by the court and Trustee, Dckt. No. 63, the court is uncertain whether Deborah Allen filed Debtor's bankruptcy petition, which is troubling on two fronts. First, because the request to appoint a guardian was not filed concurrently with Debtor's petition, the court noted that Debtor may not have had the capacity to certify that the information provided in his petition and schedules are correct. Second, Allen may not have had express authority to sign the petition as Breyer's next friend. The voluntary Chapter 13 petition that was filed on December 18, 2013 was signed by both Breyer, and Allen as the next friend. Dckt. No. 1 at 3.

The court is mystified as to why Debtor and the other parties seeking appointment as Debtor's personal representatives have not filed a response to Trustee's Motion to Dismiss. This motion has already been continued once, after Debtor's counsel and Allen appeared at the last hearing on this Motion, on February 19, 2014, and represented to the court that Debtor's grandson is to assist financially and could possibly serve as a representative. The court continued the case to allow Debtor's "team" additional time to prosecute this case. Dckt. No. 58.

Debtor's "team," however, has provided no explanation of the delay in producing the necessary tax transcripts, pay advices (or a written statement explaining the lack thereof), and have not addressed the issue of

Debtor's delinquency in making the necessary plan payments. Cause remains 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 April 2, 2014. By the court's calculation, 14 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 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,166.67 is due April 25, 2014. The case was filed on February 4, 2014. 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. Debtors have 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).

Debtors must be current under all payments called for by 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.

24. [13-30782](#)-C-13 MICHAEL/PAULA NEHER
TSB-2 Pro Se

MOTION TO DISMISS CASE
3-10-14 [[82](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors (pro se) and the Office of the United States Trustee on March 13, 2014. By the court's calculation, 34 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 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 moves the court for an order dismissing the case, based on the Debtors causing an unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

The first issue raised by Trustee is that this case has been pending for six months, with no confirmed Plan. Debtors filed their case on August 16, 2013, and has been pending 6 months without a confirmed Chapter 13 Plan. The first Meeting of Creditors was concluded on October 11, 2013,

Second, Trustee notes that Debtors have filed five Chapter 13 Plans to date, and none have been confirmed. They are described below:

1. The first plan was filed on August 16, 2013, Dctk. No. 5. Trustee filed an objection to confirmation of the plan, NLE-1, on October 15, 2013, and the objection was heard and sustained by the court on November 19, 2013. Dckt. No. 42.
2. The second plan was filed on October 15, 2013. Dctk. No. 23. Debtors did not set this Plan for a confirmation hearing.
3. The third plan was filed on October 22, 2013. Dckt. No. 24. Debtors

did not set this plan for a confirmation hearing.

4. The fourth plan was filed on December 4, 2013. Dckt. No. 48. Debtors' Motion to Confirm Plan, TSB-1, was heard and denied on January 28, 2014.
5. The fifth plan was filed on January 28, 2014. Dckt. No. 67. Debtors filed on March 6, 2014, an "Amended" Notice of Debtors' Motion to Approve the Second Modified Chapter 13 Plan, PJN-5, which was set for hearing on April 1, 2014. Trustee states that the Notice of Motion was not properly set for hearing, as only 26 days of notice was provided, violating Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), which require that 42 days' notice to confirm proposed plans be given to the Trustee and creditors.

Debtor has not filed an actual motion to confirm the Plan, and it does not appear that a declaration has been filed by the Debtor. Trustee reviewed the plan and identifies many of the same objections that it had previously raised in its prior objections to Debtors' different plans. The court denied the request to confirm the Fifth Amended Plan, noting that it agreed with the shortcomings in the plan as highlighted by the Chapter 13 Trustee. The court determined that the proposed Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a), as Debtors had not remedied the delinquency issue, or clarify treatment of unsecured claims and income discrepancies, and reevaluate the classification of Wells Fargo, N.A. as addressed by Trustee. Dckt. No. 59.

Third, Debtors are also \$546.20 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,902.20 is due on March 25, 2014. The case was filed on August 16, 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. Debtors have paid \$16,867.00 into the Plan to date.

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

OPPOSITION BY DEBTOR

Debtors' response to Trustee's Motion to Dismiss evinces a fundamental lack of understanding of the Plan confirmation process, and the function of the Chapter 13 Trustee, and the bankruptcy system and the nature of relief available to Debtors in Chapter 13 proceedings.

First, Joint Debtor Paula J. Nehr responds to Trustee's concerns by stating that "the pending plan should be confirmed when heard." This does not address the manifold defects raised by the Trustee and evaluated by the court, that preclude confirmation of Debtors' many plans.

Second, Debtors attribute their failure to file a plan to "the fact that the Trustee has not tried to work with the Debtors when phone calls have been made; therefore, Debtors have no choice to amend." ¶ 2, Declaration in Response to Trustee's Motion to Dismiss, Dckt. No. 88.

Debtors further allege that they have

made two trips to Sacramento (8 hours of commuting) in order to talk to the self-help attorneys at which both times, after looking at my paperwork, was told to call the Trustee's office to find out what information they wanted. Every phone call to the Trustee's office has resulted in the same information...get an attorney. Debtors have prepared a Plan that should be confirmed when heard. An Amended Notice of Hearing has been filed.

Third, Debtors assert that they were not advised as to any delinquency until the motion currently filed by the Trustee. Debtors state that they will pay the \$546.20 due prior to the 25th of the month; they state that "an explanation would be expected." Debtors argue that they are trying to maintain their home for their 5 children, and the "Trustee is not providing any assistance as to what they are expecting from the Debtors." Debtors state that these continued Motions to Dismiss are causing the Debtors to incur additional expenses for transportation and child care, which affect the Plan. Debtors argue that they are making plan payments, and the "only reason this has not been approved at this point is due to the continued Motions by the Trustee to Dismiss this matter."

RESPONSIBILITIES OF THE CHAPTER 13 TRUSTEE

Debtors appear to be confused by the role and wide-ranging obligations of the Chapter 13 Trustee. The Trustee is a fiduciary officer, operating within the authority granted by the Bankruptcy Code, as a legal representative of the estate. Bankr. Prac. for Gen. Practitioner § 10:4. As representative of the estate, the trustee has the statutory capacity and authority to sue others in behalf of the estate and to be sued by others regarding matters of the estate. The trustee has the exclusive right to assert all claims of the debtor and to settle all claims. See 11 U.S.C. § 323(b); see also *In re Adbox, Inc.*, 234 Fed. Appx. 420 (9th Cir. 2007) (only trustee had standing to sue for fraudulent transfer of debtor's assets).

The Chapter 13 Trustee's primary responsibility is to administer the bankruptcy estate, i.e. collect plan payments from the Chapter 13 debtor and promptly and accurately disburse those payments to creditors as specified in the debtor's plan and order confirming the plan.

The Trustee performs a number of other functions, enumerated by 11 U.S.C. § 1302 (b), which states that

(b) The trustee shall—

(1) perform the duties specified in sections 704 (a) (2), 704 (a) (3), 704 (a) (4), 704 (a) (5), 704 (a) (6), 704 (a) (7), and 704 (a) (9) of this title;

(2) appear and be heard at any hearing that concerns—

(A) the value of property subject to a lien;

(B) confirmation of a plan; or

(C) modification of the plan

after confirmation;

(3) dispose of, under regulations issued by the Director of the Administrative Office of the United States Courts, moneys received or to be received in a case under chapter XIII of the Bankruptcy Act;

(4) advise, other than on legal matters, and assist the debtor in performance under the plan;

(5) ensure that the debtor commences making timely payments under section 1326 of this title; and

(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).

The role of the Trustee is to review all the financial information submitted by the individual seeking bankruptcy reorganization (debtor) and to review the claims filed by creditors. It is the Trustee's fiduciary duty to review said information supplied by the debtors and the creditors to evaluate a case for confirmation (court approval of Chapter 13 plan). If the Trustee believes that there has been honest disclosure of all the individual's income and assets and if there are no outstanding objections to the reorganization by creditors, the Trustee will recommend the plan for confirmation.

The Chapter 13 Trustee does not serve as the legal representative of Debtors themselves, nor is the Trustee the legal representative for any creditor. The Trustee provides information about Chapter 13 cases to debtors, creditors, and to the Court. Neither the Trustee nor any member of his staff may give Debtors legal advice.

The court strongly encourages that Debtors retain counsel, or seek legal advice in filing a bankruptcy petition, and attempting to confirm a Chapter 13 Plan. It is the Debtors' prerogative to consult with a knowledgeable and competent attorney for legal advice before filing a Chapter 13 case. Unfortunately, the court has come across many cases in which Debtors have done themselves harm by not filing or completing their bankruptcy petition and supporting schedules correctly. This harm can range from losing their assets, which are liquidated because certain property could have been exempted, or losing their residence because of foreclosure actions by creditors who were not properly noticed by Debtors in their bankruptcy.

If Debtors seeking reorganization do not fill out a petition correctly, or fail to confirm a feasible Chapter 13 Plan, the Debtors risk Trustee moving for a dismissal of the case, or a creditor moving for relief from stay and for more severe action against the Debtors' assets.

CONFIRMATION OF THE CHAPTER 13 PLAN

Debtors fault the Trustee for not rendering legal advice to Debtors in filing objections to oppose Debtors' proposed plans. Debtors further argue that Trustee's opposition and Motions to Dismiss are the only hurdles to

confirmation of Debtors' Plan. These perceptions are premised on a basic misunderstanding of the plan confirmation process.

Local Bankruptcy Rule 3015-1(c) establishes the procedure to confirm an original Chapter 13 Plan, while subsection (d) of that rule outlines the process in which Debtors may modify a plan:

(c) Procedure to Confirm Original Plan.

(1) Filing the Plan. The debtor shall file Form EDC 3-080, Chapter 13 Plan, within fourteen (14) days of the filing of the petition.

(2) Serving the Plan on the Trustee. The debtor shall serve the chapter 13 plan on the trustee. The plan, together with Form EDC 3-088, Domestic Support Obligation Checklist, Form EDC 3-086, Class 1 Checklist, and Form EDC 3-087, Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee., must be received by the trustee no later than fourteen (14) days after the filing of the petition.

(3) Trustee's Service of the Plan on Creditors. The trustee shall serve all creditors and other persons entitled to notice with a copy of the debtor's chapter 13 plan. However, if the trustee does not receive the debtor's chapter 13 plan by the fourteenth (14th) day after the filing of the petition, the debtor shall seek confirmation of the chapter 13 plan by complying with the requirements of LBR3015-1(d)(1).

(4) Objecting to Plan Confirmation. Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven(7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing.

(d) Procedure to Confirm Modified Plans.

(1) Modified Plans Proposed Prior to Confirmation. If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight(28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in interest shall be served at least forty-two (42) days prior to the hearing.

Here, Debtors have not followed the procedures established by the Local Bankruptcy Rules on drafting a plan, and filing a motion to set a hearing to confirm the Chapter 13 Plan. Debtors failed to set their second and third plans for confirmation hearings, denying the Trustee and potential respondent creditors the opportunity to evaluate and object to Debtors' Plan of reorganization. Debtors' first and fourth plans were filed and denied on multiple grounds, some of which are discussed below.

Debtors' most recent plan, which was served to parties-in-interest only 29 before the plan hearing, in violation of LBR 3015-1(c)(1), was denied by the court for several reasons. The court will rehash the grounds for denial if it escapes Debtors' memory. The court noted that Debtor was \$546.20 delinquent in plan payments. The plan did not provide a dividend to unsecured creditors in Section 2.15, thereby not providing for two holders of unsecured claims (Asset System, Inc. and Citibank, N.A.), which may prevent Debtors' discharge under 11 U.S.C. § 1328(a).

Trustee also noted that the plan may not be Debtors' best effort under 11 U.S.C. § 1325(b) because it could not be determined whether Debtor is above median income. Debtors listed Wells Fargo' Second Deed of Trust to be paid in Class 4 at \$0.00; this debt may need to be listed in Class 2 and a Motion to Value the secured claim be filed if Debtor seeks to treat it as unsecured. Dckt. No. 95. The court determined that the proposed Plan did not comply with 11 U.S.C. §§ 1322 and 1325(a), as Debtors had not remedied the delinquency issue, or clarify treatment of unsecured claims and income discrepancies. Debtors had not responded by reevaluating the classification of Wells Fargo, N.A, which had was a recurring objection raised by Trustee. Dckt. No. 59. These issues have not been addressed or resolved to date.

As Trustee noted, many of Trustee's objections have persisted over the iterations of Debtors' Chapter 13 Plan. The Debtors' inability to resolve these issues casts serious doubt as to whether Debtors are capable of confirming a Chapter 13 Plan. Of further concern to the court is that Debtors do not seem to recognize that it is Debtors' responsibility to work out the problems of their plan, which have been addressed by Trustee and the court on more than a few occasions.

If Debtors wish to proceed without assistance from counsel, Debtors must understand that they will be fully responsible for representing

themselves, and are still expected to comply with the law and all court rules in preparing, filing, and serving all documents and motions. Unfortunately, based on the court's review of Debtors' case docket, Debtors' Motions have more often than not been denied for procedural defects and substantive issues, problems could have been easily cured and addressed with the assistance of competent counsel.

Here, Debtors have not confirmed a plan over an 8-month span, since Debtors filed their bankruptcy petition and commenced their case in August, 2013. This repeated failure to propose and confirm a Chapter 13 Plan is causing an unreasonable delay that is prejudicial to Debtors' creditors. Pursuant to 11 U.S.C. § 1307(c)(1), this delay constitutes cause to dismiss the case. Based on Debtors' continued inability to confirm a Chapter 13 plan, and serial issues in delinquency in their plan payments, the court finds cause to dismiss this case.

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

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

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

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

Local Rule 9014-1(f)(1) 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 14, 2014. By the court's calculation, 33 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.

Trustee asserts that the Debtor is causing unreasonable delay that is prejudicial to creditors for two reasons.

First, Debtor is \$2,825.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,425.00 is due on March 25, 2014. Debtor has paid \$1,450.00 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, Trustee's Objection to Confirmation, NLE-1, was heard and sustained on February 4, 2014. To date, Debtor has failed to file an Amended Plan and set it for confirmation. Debtor must be current under all payments called for by any pending Plan, Amended Plan, or Modified Plan as of the date of the hearing on this motion or the case may be dismissed.

The Trustee asks the court to grant an order dismissing the bankruptcy case, unless Debtor files an serves and amended plan and Motion to Confirm an amended plan, no later than April 2, 2014; be current in plan payments no later than April 2, 2014; and Debtor files a response no later than April 2, 2014, explaining the reason for the delay and explaining why it was reasonable.

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).

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.

26. [14-20285](#)-C-13 RONALD RICHARDS
Dale A. Orthner

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-18-14 [[21](#)]**

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 March 13, 2014). The court docket reflects that on March 19, 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 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:

The court continued the hearing on this matter from March 19, 2014, to this hearing date.

The Trustee initially sought an order from the court dismissing the case, on the basis that Debtor was \$4,895.38 delinquent in plan payments to Trustee to date, with the next scheduled payment of \$2,447.69 due on March 25, 2014. Trustee reported that Debtor had 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. The court noted that failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

MARCH 19, 2014 HEARING

At the hearing Debtor reported that she had been hospitalized, which cause her to miss the required plan payments. After having met with the Trustee, the Trustee recommended continuing the hearing to allow the Debtor to have the funds transmitted to the Trustee to cure the delinquency. Civil Minutes, Dckt. No. 58.

Nothing further has been filed by Debtor addressing whether the

required payments have been made. The court notes that on April 8, 2014, the Trustee filed a Reply to Debtor's Response to Trustee's Objection to Confirmation, stating that Trustee still does not recommend the confirmation of Debtor's proposed plan. Trustee mentions the hearing on the instant Motion to Dismiss, but does not state whether Debtor has cured the delinquency in her plan payments. Dckt. No. 40.

Debtor has not filed any supplemental pleadings or responses, indicating that she is now current on her payments. Thus, cause exists, under 11 U.S.C. § 1307(c)(1), to dismiss this case. The Trustee's 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 March 26, 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, Debtor's Attorney, and Office of the United States Trustee on March 28, 2014. By the court's calculation, 19 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 for two reasons.

First, Debtor is \$2,125.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$1,105.00 is due on April 25, 2014. The case was filed on November 27, 2013. 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. The Debtor has paid \$2,205.00 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, the case was filed on November 27, 2013, and Debtor has yet to confirm a plan. Trustee's Objection to Confirmation, TSB-1, was heard and sustained on February 25, 2014, and Debtor has not amended the Plan and set a confirmation hearing to date. 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).

Debtor must be current under all payments called for by 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on March 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 dismissal of the case on the basis that Debtors are \$8,517.52 delinquent in plan payments. To date, Debtors have paid a total of \$6,813.44, with the last payment received on October 23, 2013. Trustee shows that a total of \$15,330.96 is due, and Debtors' monthly payment is \$1,703.44. Prior to the hearing on this matter, another payment of \$1,703.44 will come due. As a result, Debtors will need to pay \$10,220.96 in order to bring this plan current by the date of the hearing. Debtors are in material default with respect to the terms of the confirmed plan pursuant to 11 U.S.C. § 1307(c)(6).

In the Application, the Trustee includes a record of payments received from Debtors, reflecting that no payments have been made since October 23, 2013. Dckt. No. 95.

Debtors must be current under all payments called for by 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.

31. [13-33092](#)-C-13 **FELIX/LADORA GARCIA**
Charnel J. James
3-21-14 [[87](#)]

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**

Final Ruling: The court issued an order to show cause based on Debtors' failure to pay the required fees in this case (\$10.00 due on March 14, 2014). The court docket reflects that on March 25, 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.

32. [13-34793](#)-C-13 KENNETH COX AND ANA
MERCADO
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-26-14 [[34](#)]

Tentative Ruling: The court issued an order to show cause based on Debtors' failure to pay the required fees in this case (\$71.00 due on March 21, 2014). The court docket reflects that the Debtors still have 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.

33. [14-20596](#)-C-13 EDEN ABELLA
Thru #34 Pro Se
3-31-14 [[31](#)]

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$211.00 due on March 24, 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) (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 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 dismissal of the case on the grounds detailed below.

First, 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).

Second, Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a) (1) (B) (iv).

Third, Debtor is delinquent \$100.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$100.00 is due on March 25, 2014. The case was filed on January 23, 2014, 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.

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.