

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

October 15, 2014 at 10:00 a.m.

1. [14-27700](#)-C-13 DANIEL/EMILIA POPA MOTION TO DISMISS CASE
 DPC-2 Mohammad M. Mokarram 9-15-14 [[27](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

1. Debtor is \$2,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,530.00 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not appear at the First Meeting of Creditors held on August 28, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

Cause exists to dismiss this case under 11 U.S.C. § 1307(c). The motion is granted and the case is dismissed.

October 15, 2014 at 10:00 a.m.

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].

2. [12-22801](#)-C-13 SUK KIM CONTINUED MOTION TO DISMISS
TSB-2 C. Anthony Hughes CASE
4-28-14 [[107](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal on October 9, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

3. [14-23407](#)-C-13 CHRISTIAN/AGATHA OKOYE MOTION TO DISMISS CASE
DPC-2 Eric John Schwab 9-17-14 [[46](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtors Motion to Confirm was heard and denied by the court on July 22, 2014.

2. Debtors have not filed an amended plan and are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c).

Debtors have not filed an amended plan and have not filed a declaration explaining the delay. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

4. [14-26007](#)-C-13 ADDISON BEVERLY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-8-14 [[41](#)]

CASE DISMISSED 9/23/14

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor is in material default with respect to the terms of the confirmed plan. Debtor did not provide for the priority part of the claim of the Franchise Tax Board (Claim 13-1) in the amount of \$725.18 and the priority part of the Internal Revenue Service Claim (Claim 16-1) in the amount of \$37,263.53. This is a breach of § 3.18.
2. Debtor is also in default of § 6.03 which requires Debtor's plan to not exceed a term of 60 months. Trustee calculates that the plan will complete in 76 months. 11 U.S.C. § 1322(d).

Pursuant to 11 U.S.C. § 1307(c)(6), material default by a debtor with respect to a term of a confirmed plan is sufficient cause for the court to dismiss a case. Cause exists to dismiss 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

October 15, 2014 at 10:00 a.m.

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.

6. [13-33312](#)-C-13 ROBERT/CHRISTINA QUINLAN MOTION TO DISMISS
DPC-1 Peter G. Macaluso 9-17-14 [[69](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

7. [14-26412](#)-C-13 BERNICE SCARBOROUGH ORDER TO SHOW CAUSE - FAILURE
Thru #8 Pro Se TO PAY FEES
8-26-14 [[28](#)]
CASE DISMISSED 9/23/14

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

8. [14-26412](#)-C-13 BERNICE SCARBOROUGH ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
9-22-14 [[41](#)]
CASE DISMISSED 9/23/14

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 19, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on September 11, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor did not file tax returns that were filed during the four-year period preceding the filing of the petition. 11 U.S.C. § 1308 & 11 U.S.C. § 1325(a)(9).
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
4. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. By the court's calculation, xx days' notice was provided. 28 days' notice is required.

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

The court's decision is to continue the hearing on the motion to dismiss to November 4, 2014 at 2:00 p.m.
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The Chapter 13 Trustee seeks dismissal of Debtor's case on the basis that Trustee's Objection to Confirmation and the Objection to Confirmation of Blue Sky Fund, LLC were sustained on June 3, 2014. Debtor has not filed an amended plan or motion to confirm the amended plan.

TRUSTEE'S MOTION TO CONTINUE

On October 1, 2014, Trustee filed a Motion to continue the hearing on the Motion to Dismiss to November 4, 2014 at 2:00 p.m. to be heard with Debtor's Objection to Claim.

DEBTOR'S RESPONSE

Debtor requests the Trustee withdraw the Motion or that the Motion be denied "pending resolution" of the Objection to Claim set for November 4, 2014. Debtor notes that on September 30, 2014, the court continued Blue Sky Fund LLC's Motion for Relief from Stay, for it to be heard with the Motion to Dismiss.

The court's decision is to continue the hearing on the Motion to Dismiss to November 4, 2014 at 2:00 p.m. Debtor has not proposed a modified

plan but is attempting to reconcile issues pertaining to Blue Sky Fund, LLC's secured claim.

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 hearing on the Motion is continued to November 4, 2014 at 2:00 p.m.

11. [14-26220](#)-C-13 SHIRLEY SHANNON
DPC-2 Douglas B. Jacobs
CASE DISMISSED 9/22/14

MOTION TO DISMISS CASE
9-17-14 [[64](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 15, 2014. Twenty-eight days' notice is required.

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

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

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

1. Debtor is \$1,969 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,969.00 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not appear at the First Meeting of Creditors held on August 28, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The continued meeting is set for September 25, 2014 at 10:30 a.m.

DEBTOR'S RESPONSE

Debtor states that he attended the 341 meeting of creditors and intends to be current with plan payments by the date of the hearing.

Although Debtor appeared at the continued meeting of creditors, the court lacks evidence that Debtor is current on plan payments. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

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

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

13. [14-25129](#)-C-13 NYIDRA WALKER ORDER TO SHOW CAUSE - FAILURE
Mikalah R. Liviakis TO PAY FEES
9-17-14 [[46](#)]

CASE DISMISSED 9/17/14

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

14. [14-25530](#)-C-13 ELLEN PARKER ORDER TO SHOW CAUSE - FAILURE
Mikalah R. Liviakis TO PAY FEES
9-29-14 [[18](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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 September 24, 2014). The court docket reflects that on September 30, 2014, the Debtors paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

15. [14-23635](#)-C-13 ROY/CHERISE WHITAKER MOTION TO DISMISS CASE
DPC-3 Pro Se 9-19-14 [[64](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, and Office of the United States Trustee on September 19, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtors' Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.
2. Debtors are \$484.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$484.00 is due on September 25, 2014. Debtor has paid \$1,452.00 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.

16.	<u>14-27936</u> -C-13	RANDY RICHARDSON AND	MOTION TO DISMISS CASE
	DPC-2	JACQUELYN	9-30-14 [<u>20</u>]
		Peter L. Cianchetta	

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal on October 7, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Motion from the calendar.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$4,376.84 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,186.42 is due on September 25, 2014. Debtor has paid \$4,368.84 into the plan to date.
2. Debtors filed their case on April 28, 2014 and have yet to confirm a plan. Debtors' Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

DEBTOR'S RESPONSE

Debtor is suffering from "severe health issues" the past several months that have precluded her from meeting with her attorney and making her plan payments. Debtor believes she will be able to make all plan payments going forward. Debtor states she will have a second amended plan on filed prior to the hearing on the Motion and that she will be current under the plan.

Cause exists to dismiss this case. Debtor has not proposed an amended plan and has not submitted evidence that she is current on plan payments. 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. [14-28142](#)-C-13 JOHN HARRIS
Mikalalah R. Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-15-14 [[18](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on October 10, 2014). The court docket reflects that on September 22, 2014, Debtor paid the final installment fee.

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

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

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

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

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on August 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$6,605 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,455.00 is due on September 25, 2014. Debtor has paid \$20,400.00 into the plan to date.

Cause exists to dismiss this case. Debtor is in material default under the terms of a confirmed plan. 11 U.S.C. § 1307(c)(6). 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.

October 15, 2014 at 10:00 a.m.

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor's Motion to Confirm was heard and denied at the hearing on August 19, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

Cause exists to dismiss this case. Debtor's lack of prosecution is causing unreasonable delay that is prejudicial to creditors. The motion is granted and the case is dismissed.

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

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

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

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

21. [14-28055](#)-C-13 TERRY CONANT
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-11-14 [[39](#)]

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

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

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

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

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

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

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

22. [14-26160](#)-C-13 MICHAEL MCCALL
Charnel J. James

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-15-14 [[59](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 9, 2014). The court docket reflects that on September 17, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 19, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$3,081.17 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,661.17 is due on September 25, 2014. Debtor has paid \$11,205.85 into the plan to date.
2. Debtor's Motion to Confirm was heard and denied at the hearing on July 22, 2014 and Debtors have not amended the plan and set a confirmation hearing date. Debtors are causing unreasonable delay that is prejudicial to creditors.

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

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

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

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

good cause appearing,

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

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

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

Below is the court's tentative ruling.

Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on August 22, 2014.

The Motion to Delay Notice of Intent has been set for hearing on the notice required by the Clerk of the Court. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to delay the dismissal as moot and dismiss the case.
--

On August 7, 2014, the court issued a Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are not Timely Filed. (Dkt. 3).

On August 22, 2014, Creditor, Five Star Bank, filed a Motion requesting the court hold a hearing on the Notice of Intent to Dismiss. The requests the court delay dismissing the case until after the Bank's Motion for In Rem Relief from the Automatic Stay is hearing on September 16, 2014.

The court heard the Creditor's Motion on September 16, 2014 and granted Creditor relief from stay and *in rem* relief binding for a period of two years. As the relief requested has been granted, the court denies the Creditor's motion to delay dismissal of the case as moot.

NOTICE OF INTENT

The Notice of Intent required that the following be received by the clerk's office by August 21, 2014:

- A. Attorney's disclosure statement
- B. Chapter 13 Plan
- C. Means Test

- D. Schedules A-J
- E. Statement of Financial Affairs
- F. Statistical Summary
- G. Summary of Schedules

A review of the docket shows that Debtor did not file the missing documents by August 21, 2014 and has not filed a Motion for an Extension of Time to file the missing documents.

Pursuant to 11 U.S.C. § 1307(c)(1), cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

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

The Motion Delay filed by the Creditor 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 Delay the case filed by Five Start Bank is denied as moot.

IT IS FURTHER ORDERED that pursuant to the Notice of Incomplete Filing and Notice of Intent to Dismiss Case if Documents are not Timely Filed the case is dismissed.

25. [14-27762](#)-C-13 CESAR RAMAGOZA
Thru #26 Jennifer C. Wong

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-3-14 [[21](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on August 29, 2014). The court docket reflects the fee was not paid.

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

The fees not having been paid, the Order to Show Cause is sustained and the case is dismissed. The court is simultaneously granting the Trustee's Motion to Dismiss (Dkt. 33, DCN DPC-2).

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

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

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 19, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor did not appear at the First Meeting of Creditors held on September 11, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$100 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on September 25, 2014. Debtor has paid \$0.00 into the plan to date.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

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.

27. [14-28272](#)-C-13 DIANNE AKZAM
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-18-14 [[32](#)]

CASE DISMISSED 9/29/14

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$19,095 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$4,750.00 is due on September 25, 2013. The last payment was received on May 27, 2014. Debtor has paid \$75,905.00 into the plan to date.

Cause exists to dismiss this case as debtor is in material default under the terms of a confirmed plan. 11 U.S.C. § 1307(c)(6). The motion is granted and the case is dismissed.

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on August 18, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The court's decision is set an evidentiary hearing on the Motion to Dismiss for [date] at [time].
--

Creditor, Robert Guerra, seeks dismissal of Debtor's case. Creditor obtained a non-dischargeable judgment against Debtors, currently valued at \$125,000 (Case No. 97-01766 C.D. Cal.).

When Creditor began levying execution on Debtors' wages, Debtors filed a Chapter 13 petition (Case No. 12-38100). Debtors' initial plan sought to paid 0% to unsecured creditors and discharge Creditor's judgment. Debtors' filed an amended plan in response to Creditor's Objection which paid a 2% dividend to unsecured creditors and excepted Creditor's claim from discharge. Creditor again objected and filed a Motion to Dismiss on the grounds that Debtors were ineligible for Chapter 13 relief. Debtors opted to convert their case to Chapter 7 and received a discharge on June 25, 2013.

Creditor argues that Debtors filed the instant case in bad faith. Debtors are seeking to discharge non-dischargeable debts and pay nothing to unsecured creditors. Creditor asserts that Debtors do not meet the eligibility requirements of 11 U.S.C. § 109(e).

Creditor argues that Debtors are attempting to retain their lavish home and the primary purpose of the filing is to attempt to discharge the non-dischargeable debt due to Creditor.

DEBTORS' RESPONSE

In response, Debtors assert the following:

1. Debtors plan is proposed in good faith and is an effort to "catch-up" on the arrears on their home and to pay back taxes. Debtors tried to do this in the previous case; however, tax debts rendered them ineligible for Chapter 13 under 11 U.S.C. § 109(e). Debtors were able to discharge hundreds of thousands of dollars in non-priority debts (including taxes) in a conversion to Chapter 7. The IRS now only has a claim for \$15,094.94 (IRS Proof of Claim).
2. Debtor asserts that the debt limit issue is tricky in this case. Debtors presented the following three perspectives on the debt limit analysis relevant to 11 U.S.C. § 109(e).

On Its Face Analysis

On its face, Debtors filed this case with \$589,763 in secured debt and \$366,011.14 in unsecured debt.

Debtors' secured debt section preliminarily treated Wells Fargo Bank, N.A.'s second deed of trust, in the amount of \$130,567.37, as wholly secured due to the fact that it was secured with at least \$46,030.70 in equity from Debtors' primary residence.

Based on the claims filed, the current claims register lists \$17,189.15 in secured debt and \$258,315 in unsecured debt, within the 11 U.S.C. § 109(e) limits.

Pre-Filing Analysis

Pre-filing estimates were \$640,740.76 in secured debt, as to both debtors, and \$312,299.88 in unsecured debt as to Debtor OR \$345,340.77 in unsecured debt as to Joint Debtor.

Debtors separated the amount of unsecured debt as to each Debtor because each Debtor is not liable for the separate debt of the other.

No Monies Owed on Second/Third Mortgages to Wells Fargo Bank, N.A. Analysis

If Debtors do not owe Wells Fargo Bank, N.A. for either of a second or third mortgage, total secured debt remains at \$510,143 as to both debtors and \$233,097 in unsecured debt as to the Debtor OR \$266,138 in unsecured debt as to the Joint Debtor.

Debtors assert documents relating to Wells Fargo Bank, N.A. evidence a writing off, reconveyance, and discharge of any deficiency balance (Exh. D, Exh. E) and display a zero balance currently owing. Counsel for Debtor states that he did not pinpoint to specific sections of the text, because "you need to read the full set of documents to get the larger picture that the Debtors no longer owe Wells Fargo Bank, N.A. on either their 2nd/3rd mortgages."

CREDITOR'S RESPONSE

October 15, 2014 at 10:00 a.m.

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Creditor reiterates its bad faith argument. Creditor takes issue with Debtors eligibility arguments on the following basis:

1. Debtors submitted no evidence suggesting that the student loan debt is not a joint debt.
2. Debtors have filed a joint case and have submitted no authority for the proposition that separate debts owed by joint filing debts should be treated separately.
3. Debtors' statements that the Wells Fargo Bank, N.A.'s debts are no longer owed are made in contradiction to Debtors' Schedules that state the unsecured deficiency owed to Wells Fargo is in excess of \$46,000.

DISCUSSION

The court's discussion will focus on bad faith and Chapter 13 eligibility.

Creditor's bad faith argument was recently gravely undermined by Debtors entering into a Stipulation with the Chapter 13 Trustee confirming that pursuant to 11 U.S.C. § 1328(f)(1), they are not eligible to receive a discharge in this case as they received a discharge under 11 U.S.C. § 727 in a previous Chapter 7 case.

Creditor argued that Debtors' case was filed in bad faith because the plan seeks to discharge non-dischargeable debts and pays nothing to unsecured creditors. While the proposed plan does offer a 0% dividend to unsecured creditors, the fact that Debtors entered into this Stipulation discredits Creditor's argument that Debtors pursued this Chapter 13 in an attempt to discharge non-dischargeable debts.

Further, Debtors state that their reason for proposing the Chapter 13 plan is to catch-up the arrears on their home and to pay back taxes. It is not uncommon for Debtors to discharge debts in a Chapter 7 plan and turnaround and file a Chapter 13 plan to continue the reorganization process. The court does not find that Debtors filed the plan to attempt to discharge the Creditor's non-dischargeable debt.

What remains an outstanding issue, and may be relevant to bad faith, is whether Debtors are eligible for Chapter 13 relief under 11 U.S.C. § 109(e).

11 U.S.C. § 109(e) provides that only an individual with regular income that owes, *on the date of filing*, noncontingent, liquidated, unsecured debts of less than \$383,175 and noncontingent, liquidated, secured debts of less than \$1,149,525 may be a Debtor under Chapter 13. (Emphasis added).

Debtors filed their case on July 22, 2014, without a summary of schedules or any schedules. A summary of schedules was filed on August 4, 2014, asserting total secured debts of \$718,372.28 and total unsecured debts of \$237,401.76, facially squarely within the debt limits. However, Debtors most recently stated in their opposition to the Motion to Dismiss that, on its face, Debtors filed this case with \$589,763 in secured debt and \$366,011.14 in unsecured debt. This would also be an amount within the debt limits.

Debts as presented on Debtors' schedules are as follows:

Secured Debts

1.	HOA Dues	\$900.00
2.	Capital One Auto Loan	\$13,700
3.	Ford Motor Auto Loan	\$1.00 (surrendered)
4.	IRS	\$1.00 (listed out of caution)
5.	2011 HOA Dues	\$1.00
6.	Wells Fargo Bank, N.A. First DOT ...	\$494,000
7.	Wells Fargo Bank, N.A. Second DOT ..	\$130,567.37
8.	Wells Fargo Bank, N.A. Third DOT ...	\$79,202.01

TOTAL: \$718,372.38

Unsecured Debts

1.	Franchise Tax Board	\$29,339.24
2.	Internal Revenue Service	\$4,418.27
3.	American Student Assistance	\$21,138.74
4.	Bay Area Credit Service	\$13,081.90
5.	Cal Pacific Medical Center	\$872.50
6.	CMRE Financial Services	\$100.19
7.	Grant & Weber	\$941.36
8.	ECMC	\$38,000
9.	NCO Financial	\$1,721.20
10.	Robert Guerra	\$122,000
11.	St. Mary's Medical Center	\$100.00
12.	Rocklin Pool & Spa	\$2,556
13.	Sutter Health	\$39.00
14.	Sutter Health	\$1,635.41

TOTAL \$237,401.76 (note: the court removed the \$1.00 notice only listings from the list above)

From the Claims Register, the court pulled the following secured and unsecured debts existing at the time the case was filed, some are updated amounts from debts lists on the Schedules:

Claim 1:	Azurea I, LLC unsecured	\$3,129.69
Claim 2:	Capital One Auto Finance	\$13,171.76
Claim 3:	ECMC, unsecured	\$75,880.31
Claim 4:	ECMC, unsecured	\$42,839.42
Claim 5:	Robert Guerra	\$125,388.49
Claim 6:	Internal Revenue Service	\$15,094.84

Further, the court is aware of the potential extinguishment of the lien of Wells Fargo, N.A. as it relates to the second deed of trust on Debtors' property. Debtors discussed this in their third debt equation analysis and an Objection to Confirmation (Dkt. 44) lodged by Wells Fargo Bank, N.A. confirms that a lien against the property the Debtors identified as a second deed of trust was released due to a government program.

Overall, the court is left with a piecemeal, confusing, and sloppy presentation of the secured and unsecured debts that were existing at the time the case was filed. Because the court is faced with an issue of fact, namely, making a determination of the amount of debt, and because there are numerous figures with excessive supporting documentation, the court's decision is to set the matter for an evidentiary hearing. This will permit the court to make

findings of fact concerning 11 U.S.C. § 109(e) eligibility with orderly presented, competent, and admissible evidence.

The court's decision is to set the matter for an evidentiary hearing on **[date]** at **[time]**.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is set for an evidentiary hearing on [date] at [time].

30. [14-27878](#)-C-13 JOYCE ATKINS
Mikalalah R. Liviakis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-5-14 [[20](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 2, 2014). The court docket reflects that the fee was not paid.

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

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

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

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

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

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

31. [14-27878](#)-C-13 JOYCE ATKINS MOTION TO DISMISS CASE
DPC-2 Mikalah R. Liviakis 9-19-14 [[26](#)]

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

32. [14-28178](#)-C-13 JACQUELINE GIPSON ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
9-16-14 [[20](#)]

Final Ruling: No appearance at the October 15, 2014 hearing is required.

The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 11, 2014). The court docket reflects that on September 30, 2104, the Debtor paid the fees upon which the Order to Show Cause was based.

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

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

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

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

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

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

33. [14-28479](#)-C-13 KENNETH WELKER
Thru #34 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
9-25-14 [[22](#)]

Tentative Ruling: The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$77.00 due on September 22, 2014). The court docket reflects that the fee was not paid. The court is also granting the Trustee's Motion to Dismiss (Dkt. 24).

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

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

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtor is \$1,105.05 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,105.05 is due on October 25, 2014. Debtor has paid \$22,592.50 into the plan to date.
2. Debtor received a discharge in a prior Chapter 7 case (14-22539) filed March 13, 2014 with a discharge date of July 21, 2014. Debtor filed the current case on August 21, 2014 and is not eligible for a discharge.

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

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

holding that:

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on October 1, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtors are \$3,760 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,760.00 is due on October 25, 2014. Debtor has paid \$0.00 into the plan to date.

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

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

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

Final Ruling: No appearance at the October 15, 2014 hearing is required.

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

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

1. Debtors filed their case on May 30, 2014 and have yet to confirm a plan. Trustee's Objection to Confirmation was heard and sustained at the hearing on October 7, 2014. Debtors are causing unreasonable delay that is prejudicial to creditors.
2. Debtors filed Amended Schedules B, C, and J on July 11, 2014 and, based on Amended Schedule J, Debtors have monthly projected disposable income of \$111.39 and Debtors are proposing a plan payment of \$235.00 for 60 months. Debtors cannot afford these plan payments.

DEBTORS' RESPONSE

Debtors filed this response but qualify that it is in response to the continued Trustee's Objection to Confirmation.

Debtors respond to the Trustee's supplemental objection:

1. Debtors have entered a Stipulation with Wells Fargo Bank, N.A.

regarding the second deed of trust.

2. In response to Trustee's concern about Debtors affording the plan payment, Debtors state that their income varies with the season and some months are higher than others, allowing them to save during the higher months.
3. In response to the Trustee's objection to liquidation analysis, Debtors assert that the Trustee is not considering that a chapter 7 Trustee would not be able to sell the inoperable Chevrolet Cobalt for a reasonable price.

DISCUSSION

Debtors' case was filed on May 30, 2014 and Debtors have not yet confirmed a Chapter 13 plan. Debtors are proposing a plan with a payment that exceeds their net disposable monthly income per Schedules filed in July 2014. Debtors have not demonstrated that they are capable of confirming a Chapter 13 plan and are causing unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c). The motion is granted and the case is dismissed.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 30, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Debtors are \$3,495 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$3,495.00 is due on October 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor did not appear at the First Meeting of Creditors held on September 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
3. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on September 17, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Dismiss is continued to October 21, 2014 at 2:00 p.m.

The Chapter 13 Trustee seeks dismissal of Debtor's pursuant to 11 U.S.C. § 1307(c)(1), Debtor is causing unreasonable delay that is prejudicial to creditors and requests an order pursuant to 11 U.S.C. § 105(a) prohibiting Debtor from filing any subsequent petition under the bankruptcy code without first obtaining permission from the court for the district in which the case would be filed.

Since 2009, Debtor has filed six cases in the Eastern District of California. Each case has been inadequately prosecuted and each was commenced with a skeleton filing. Debtors case history is as follows:

Case Number	Date Filed	Debtor Name	Disposition	Notes
09-44142	11/04/09	Alexander Zeakovi	Dismissed 01/07/10. Reopened 01/28/10. Terminated 02/18/10.	No relief granted.
10-20028	01/04/10	Alexander Zeakovi	Dismissed 04/09/10	No relief granted.

11-29821	04/21/11	Aleksandr Zhirkov	Dismissed 08/03/11	No relief granted.
12-33723	07/26/12	Alexsandr Zhirkov	Dismissed 11/09/12	No relief granted.
13-31337	08/29/13	Alexander Zeakovi	Dismissed 11/14/13	No relief granted
14-24797	05/07/14	Aleksandr Zhirkov	Pending.	

The current case was commenced with a skeleton filing. On May 5, 2014, the court issued a notice of incomplete filing, and allowed the Debtor until May 21, 2014 to file the missing documents. Debtors filed a motion to extend the document filing deadline that was denied by the court (Dkt.). Debtor filed the missing schedules on May 27, 2014 and a Chapter 13 plan on May 29, 2014.

Trustee convened the first meeting of creditors on June 26, 2014. The Trustee's Objection to Confirmation (DPC-2) and Objection to Exemptions (DPC-3) were both heard and sustained by the court at the hearing held August 5, 2014. (Dkts. 66 & 67).

To date, Debtor has not filed an amended plan. A total of three plan payments have come due. Debtor is \$100 delinquent in plan payments, with the next scheduled payment of \$100 being due September 25, 2014. Debtor has paid \$200 into the plan to date.

On August 26, 2014, the court entered a civil minute order granting OneWest N.A., f/k/a OneWest Bank, FSB's Motion for Relief from Stay with *in rem* relief binding for two years.

Trustee believes that Debtor's repeat filings are an attempt to delay, finder, or defraud creditors and believes there is a strong likelihood that Debtor will continue to file future bankruptcy petitions in attempts to delay, hinder, or defraud creditors.

DEBTOR'S OPPOSITION

Debtor argues that there are no facts to support that creditors are prejudice by Debtor's actions. Specifically, Debtor points out that the only creditor who filed a proof of claim is OneWest Bank, N.A., and it was granted relief from the automatic stay on August 28, 2014. The relief granted in that motion was ordered binding for a period of two years. The basis for the Motion to Dismiss, Debtor argues, was mooted by the granting of the relief for automatic stay.

Further, Debtor asserts that Debtor has been actively engaged with OneWest over the course of his filing history to in an effort to retain his home. He felt that bankruptcy was his only option when faced with Trustee Sales. Debtor argues he attempted to complete each case in good faith.

Debtor asserts that he and OneWest entered into a trial loan modification plan that will possibly alleviate the need for bankruptcy.

Debtor has retained counsel to provide advice throughout the bankruptcy process and Debtor's counsel is working diligently to review

Debtor's last proposed plan, the pending Objection to Proof of Claim, and the related adversarial complaint.

Counsel for Debtor anticipates that she will do one of the following no later than three days following the order on the Trustee's Motion to Dismiss:

- (1.) File a voluntary Motion to Dismiss the case; or
- (2.) File an Amended Chapter 13 Plan and Motion to Confirm

DISCUSSION

The court's decision is to continue the hearing on the Motion to Dismiss to October 21, 2014 at 2:00 p.m. The court retains the right to dismiss the case and issue an order precluding future filings with certain qualifications under 11 U.S.C. § 105(a).

The court agrees with the Trustee that the Debtor's filing history is troublesome and did grant *in rem* relief on the stay motion based on Debtor's filing history. However, the court is also aware that Debtor has now acquired counsel, has paid the full filing fee for the case, and counsel seems determined to prosecute this case immediately.

Debtor stated that he engaged in a trial loan modification with OneWest, N.A.; however, the court was not presented with a motion to approve the loan modification. If counsel for Debtor decides to file an amended plan that incorporates the terms of the trial loan modification, she should also strongly consider filing a motion to approve the terms of the loan modification.

The court will issue an order continuing the matter to October 21, 2014. The court will also issue an order dismissing the case if by October 20, 2014, Debtor has not either filed a voluntary motion to dismiss or filed an amended chapter 13 plan and related motion to confirm.

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 continued to October 21, 2014 at 2:00
p.m.

IT IS FURTHER ORDERED that if by
October 20, 2014 Debtor has not filed either a
voluntary Motion to Dismiss his case or an
Amended Plan with a Motion to Confirm the Amended
Plan, the court will issue an order dismissing

the case pursuant to 11 U.S.C. § 1307(c)(1) and prevent the Debtor from refiling without permission from the District in which he seeks to refile his case.