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2 **So Ordered.**



*Frederick P. Corbit*

**Frederick P. Corbit**  
**Bankruptcy Judge**

3  
4 **Dated: August 1st, 2014**

5 **UNITED STATES BANKRUPTCY COURT**  
6 **EASTERN DISTRICT OF WASHINGTON**

7 In re:

8 IAN FRANCIS BOYLE,

9 Debtor.

Case No. 14-01363-FPC13

ORDER DENYING TRUSTEE'S  
MOTION TO DISMISS

10 THIS MATTER came before the court on the Trustee's Motion to Dismiss for  
11 Failure to Timely File Documents (ECF No. 25). The court reviewed the files and  
12 records herein, heard argument of counsel, is fully advised in the premises, and  
13 enters findings of fact and conclusions of law, and an order.

14 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

- 15 1. The debtor filed a chapter 13 bankruptcy petition on April 10, 2014  
16 (ECF No. 1 at pp. 1-3).
- 17 2. Together with the debtor's bankruptcy petition, the debtor filed  
18 schedules, a Statement of Financial Affairs, and a Chapter 13 Statement of Current  
19 Monthly Income (ECF No. 1 at pp. 26, 34 and 49). Each of these documents were  
20 verified by the debtor as true and correct in accordance with Fed. R. Bankr. P. 1008.

1           3.     In the debtor’s schedules, he verified that he was not employed and that  
2 he is a disabled veteran of the United States Army (ECF No. 1 at p. 22).

3           4.     In the debtor’s Statement of Financial Affairs, he verified that he had no  
4 income “from employment, trade, or profession, or from operation of the debtor’s  
5 business” during the two years prior to the filing of his bankruptcy petition (ECF  
6 No. 1 at p. 27).

7           5.     In his Chapter 13 Statement of Current Monthly Income, the debtor  
8 verified that he received no income from “wages, salary, tips, bonuses, overtime,  
9 [or] commissions” during the six (6) month period preceding the petition date (ECF  
10 No. 1 at p. 43).

11          6.     The debtor has no payment advices to file because he had no income  
12 from employment, trade, a profession, or the operation of a business.

13          7.     On June 5, 2014, the Chapter 13 Trustee (the “trustee”) filed a motion  
14 in which he requested that the court dismiss the debtor’s bankruptcy case as a result  
15 of the debtor’s failure to timely file “Payment Advices and/or Declaration re: Lack  
16 of Payment Advices” (ECF No. 25). The trustee asserted in his motion that the relief  
17 requested was “pursuant to FRBP 1007(c) and/or FRBP 3015 and 11 U.S.C.  
18 §521(a).”

1           8.     On June 11, 2014, the debtor’s counsel filed an objection to the  
2 trustee’s motion to dismiss (ECF No. 31). In the objection the debtor’s counsel  
3 stated:

4           The debtor received no payment advices of the kind described in and  
5 required to be filed under 11 U.S.C. § 521(a). Contrary to the trustee’s  
6 assertion, there is no requirement that debtors file a declaration regarding  
7 the lack of such payment advices under the statute, Federal Bankruptcy  
8 Rules, or Local Bankruptcy Rules.

9           9.     On April 15, 2014, the debtor filed a declaration, signed under penalty  
10 of perjury, in which he states that he did not have to file tax returns for 2011, 2012  
11 or 2013 because his sole sources of income were from “Social Security Disability”  
12 and “VA Disability” (ECF No. 12).

13           10.    The debtor’s schedules, Statement of Financial Affairs, Chapter 13  
14 Statement of Current Monthly Income, and declaration of April 15, 2014, each  
15 provide statements that are verified pursuant to Fed. R. Bankr. P. 1008 and provide  
16 evidence that there are no payment advices that need to be filed in this case.

17           11.    On June 18, 2014, the trustee filed a response to the debtor’s objection  
18 (ECF No. 40). In the response, the trustee cited 11 U.S.C. § 521(a)(1)(B)(iv) for the  
19 proposition that the debtors are required to file copies of payment advices; however,  
20 the trustee cited no code section, rule, or other authority for the proposition that a  
debtor is required to file a declaration where there are no payment advices available  
for filing.

1           12.    On June 24, 2014, the trustee filed a report that there were no objections  
2 to confirmation of the debtor's chapter 13 plan, and in that report the trustee  
3 recommended that the debtor's plan be confirmed because it satisfies the  
4 requirements of the Bankruptcy Code (ECF No. 44).

5           13.    On July 8, 2014, the debtor's plan was confirmed (ECF No. 49).

6           14.    On July 28, 2014, the trustee filed a supplemental reply in support of  
7 his motion to dismiss the debtor's case (ECF No. 50). In the supplemental reply, the  
8 trustee asserted for the first time that the debtor is required by Fed. R. Bankr. P.  
9 4002(b)(2) to provide a written statement that payment advices do not exist or are  
10 not in the debtor's possession.

11           15.    In the supplemental reply, the trustee quotes the Advisory Committee  
12 Notes to the 2008 amendments to Fed. R. Bankr. P. 4002(b)(2) to support the  
13 assertion that debtors are required to cooperate and provide the requested  
14 documents; however, the quoted paragraph also provides:

15           Subdivision (b)(2) does not require that the debtor create documents or  
16 obtain documents from third parties; rather, the debtor's obligation is to  
17 bring to the meeting of creditors under §341 the documents which the  
18 debtor possesses.

18           16.    The continuation of the trustee's effort to dismiss the debtor's case is  
19 inconsistent with the trustee's recommendation that the debtor's plan be confirmed.  
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