

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Modesto, California

July 27, 2009 at 1:30 p.m.

1. 09-91401-A-13G JOHN YAP HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [15]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 15. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on May 30. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was June 29. The schedules and statements were not filed on or before the 45th day. Thus, on June 30, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

2. 09-91402-A-13G BERNARD CLARK HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [22]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

A review of the proposed plan reveals that Chase Home Finance holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b)(5).

General Order 05-03 provides at paragraph 3(a): "*The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together*

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with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."

At paragraph 5(c)(2), the General Order provides: "To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by Chase Home Finance. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

3. 09-91203-A-13G JOSE ORTIZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-4-09 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on April 30. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on May 15. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was June 14. The schedules and statements were not filed on or before the 45th day. Thus, on June 15, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

4. 09-91508-A-13G ANTHONY AVILA HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-11-09 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 22. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 6. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 6. The schedules and statements were not filed on or before the 45th day. Thus, on July 7, the

petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

5. 09-90909-A-13G ALLEN/PATTI DURDEN HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
6-29-09 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor agreed with the trustee to propose a modified plan rather than seek confirmation of the plan initially proposed by the debtor. The debtor then failed to promptly file and serve a modified plan and a motion to confirm it. The failure to abide by the agreement with the trustee and to confirm a plan has caused delay that is prejudicial to creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(3) & (c)(4). This is so even though the debtor proposed a modified plan after the trustee moved for dismissal. The modified plan was not accompanied by a motion to confirm it.

6. 09-90410-A-13G MICHAEL/CAROL CURRY HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
6-4-09 [29]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation at a hearing on May 4. The debtor thereafter proposed a modified plan and set it for a confirmation hearing. However, the debtor voluntarily dismissed that motion. These facts suggest to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

7. 09-91511-A-13G PATRICIA HINDMAN HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-13-09 [30]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 22. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 6. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case,

the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 6. The schedules and statements were not filed on or before the 45th day. Thus, on July 7, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

8. 09-91423-A-13G LEMLEM ARAYA HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [15]

Final Ruling: The motion will be dismissed because it was moot. The case was previously ordered dismissed.

9. 09-91425-A-13G DELIA MABERRY HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
7-13-09 [41]

Final Ruling: The trustee has voluntarily dismissed this motion.

10. 09-91626-A-13G LUPE LOPEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-19-09 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on June 1. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 16. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 16. The schedules and statements were not filed on or before the 45th day. Thus, on July 17, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

11. 09-91728-A-13G ANTHONY RICHARDS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-29-09 [11]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

Fed. R. Bankr. P. 1007(c) and 3015(b) required that the debtor file schedules

of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period expired on June 24 without any of these documents being filed. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1). While the documents were filed on July 17, this was too late for the trustee to serve the proposed plan with the notice of the commencement of the case. Further, the debtor failed to file and serve a motion to confirm the plan. This is required by General Order 05-03, ¶¶ 3(a)(2) and 8(a) and by 11 U.S.C. § 1324 which requires that a confirmation be held no later than 45 days after the meeting of creditors. Because no motion was filed and served by the debtor, it will be impossible for the debtor to meet this deadline.

12. 09-90533-A-13G BETEAB FISSIHA HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
6-8-09 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed a modified plan rather than seek confirmation of the original plan. The debtor, however, failed to file and serve a motion to confirm the modified plan until after this dismissal motion was filed. The debtor's motion will be heard on August 10. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on August 10, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a plan within a reasonable time after filing the petition has caused delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1).

13. 09-91433-A-13G MARIA CHAVEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [23]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

14. 09-91437-A-13G ETEUINI MOSE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-11-09 [8]

Final Ruling: The trustee has voluntarily dismissed this motion.

15. 09-91438-A-13G HERMAN PEDERSON, III HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-5-09 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 19. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 3. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 3. The schedules and statements were not filed on or before the 45th day. Thus, on July 4, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

16. 09-91538-A-13G JAMAL HASSAN AND HEARING - MOTION FOR
RDG #1 ALICIA WILSON ORDER OF DISMISSAL
6-19-09 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 27. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 11. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 11. The schedules and statements were not filed on or before the 45th day. Thus, on July 12, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

17. 09-91542-A-13G DAVID/MARIE HARTER HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-13-09 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

A review of the proposed plan reveals that WLSFGR HMMTG holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b)(5).

General Order 05-03 provides at paragraph 3(a): "*The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1*

Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."

At paragraph 5(c)(2), the General Order provides: *"To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."*

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by WLSFGR HMMTG. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Also, the debtor owes a domestic support obligation to Melanie Sue Harter. General Order 05-03, ¶ 3(a) provides:

"The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the order that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4), and has caused delay to the prejudice of creditors. This is cause for dismissal. See 1307(c)(1).

18. 09-90743-A-13G ANDRES/MARIA SILVA
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
6-8-09 [27]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed a modified plan after the court sustained the trustee's objection to the confirmation of an earlier proposed plan at a hearing on June 1. The debtor's motion to confirm the latest plan will be heard on September 21. On condition that the debtor's motion is granted and the modified plan is confirmed at the hearing on September 21, the case will remain pending. If it is not granted, the petition will be dismissed on the trustee's further ex parte application. The failure to confirm a plan within a reasonable time after filing the petition has caused delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c) (1).

19. 09-91546-A-13G BASILIO GONZALEZ
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
6-15-09 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 27. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a) (1). The time to file those documents expired on June 11. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i) (1). In this case, the 45th day was July 11. The schedules and statements were not filed on or before the 45th day. Thus, on July 12, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i) (2). The trustee shall lodge a proposed order.

20. 09-91748-A-13G JOSE ROBLES
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
6-29-09 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on June 10. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a) (1). The time to file those documents expired on June 25. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case,

the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 25. The schedules and statements were not filed on or before the 45th day. Thus, on July 26, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

21. 09-91451-A-13G BERTHA SARMIENTO HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [13]

Final Ruling: The trustee has voluntarily dismissed the motion.

22. 08-92553-A-13G MANUEL/CARMEN INFANTE HEARING - MOTION FOR
RDG #2 ORDER OF DISMISSAL
6-4-09 [89]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,694 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

23. 09-91854-A-13G RUDY/STACY ELIAS HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-13-09 [12]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

24. 09-91056-A-13G LAWRENCE/WENDY BOLDON HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-13-09 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$3,706 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

25. 09-91657-A-13G DAN CURRY HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-23-09 [18]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on June 3. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 18. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 18. The schedules and statements were not filed on or before the 45th day. Thus, on July 19, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

26. 09-91658-A-13G THERESA GONZALEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-23-09 [10]

Final Ruling: The motion will be dismissed because it is moot. The case was previously ordered dismissed.

27. 09-90463-A-13G SCOTT/GENA BUCHANAN HEARING - MOTION FOR
RDG #3 ORDER OF DISMISSAL
6-4-09 [29]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation at a hearing on May 4. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

28. 09-91764-A-13G RONI OSMAN
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
7-1-09 [7]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on June 11. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 26. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 26. The schedules and statements were not filed on or before the 45th day. Thus, on July 27, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.

29. 09-91170-A-13G TERRY/JULIA DOWNER
RDG #1

HEARING - MOTION FOR
ORDER OF DISMISSAL
6-22-09 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

The debtor failed to appear at the meeting of creditors on June 17 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

30. 08-91472-A-13G LUKE MCDUGLE, JR.
RDG #3

HEARING - MOTION FOR
ORDER OF DISMISSAL
7-13-09 [71]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

This case was filed on July 22, 2008. Therefore, a proposed plan should have been filed no later than August 6, 2008. See Fed. R. Bankr. P. 3015(b). It was filed late on September 4, 2008. Because the plan was not filed timely by the debtor, the trustee was unable to serve the plan with the notice of commencement of case as required by General Order 05-03, ¶ 3(a)(1). This meant that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See General Order 05-03, ¶¶ 3(a)(2) & 8(a).

A review of the docket reveals that the meeting of creditors was concluded on February 25, 2009. A further review of the docket reveals the debtor has not

yet filed a motion to confirm the late-filed plan (or any other plan) nor served it on creditors.

31. 09-91174-A-13G JAIME/MELVA GUTIERREZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-2-09 [16]

Final Ruling: The trustee has voluntarily dismissed the motion.

32. 09-90175-A-13G JAMES/BARBARA COOK HEARING - MOTION FOR
RDG #3 ORDER OF DISMISSAL
7-13-09 [65]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$100 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the debtor has breached the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4) by failing to cooperate with the trustee by providing him with financial records of the debtor's business and the debtor's 2008 income tax return. This breach of duty has delayed the trustee's investigation into the proposed plan and has delayed confirmation to the prejudice of creditors. This too is cause for dismissal.

33. 09-91576-A-13G LASARO/AMELIA REYES HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-26-09 [15]

Final Ruling: The trustee has voluntarily dismissed this motion.

34. 09-91686-A-13G STEVE/JILL DUROSSETTE HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-1-09 [11]

Final Ruling: The trustee has voluntarily dismissed the motion.

35. 09-91290-A-13G JOSE/MARI JIMENEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-9-09 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

A review of the proposed plan reveals that Jose Jimenez holds a secured, long term claim that is provided for in Class 1 of the plan. There are pre-petition arrears on this claim that must be cured through the plan. The plan provides for this cure as well as the maintenance of post-petition contract installment payments by the trustee as permitted by 11 U.S.C. § 1322(b)(5).

General Order 05-03 provides at paragraph 3(a): "The chapter 13 plan shall be completed and filed within 15 calendar days of the filing of the petition as required by FRBP 3015(b) and Local Bankruptcy Rule 3015-1(a). The debtor or the debtor's attorney shall serve the chapter 13 plan, all motions to value collateral, and all motions to avoid liens, as well as the statement of financial affairs and the schedules on the Trustee. These documents, together with the Domestic Support Obligation Checklist, Exhibit 3, and the Class 1 Claim Checklist and Authorization to Release Information required by subparagraph 5(c)(2) below, must be received by the Trustee no later than 15 calendar days after the filing of the petition."

At paragraph 5(c)(2), the General Order provides: "To assist the Trustee in making post-petition contract installment payments to Class 1 claim holders, the debtor shall complete the Class 1 Checklist and Authorization to Release Information, Exhibit 5, and deliver it to the Trustee within 15 calendar days of filing the petition. This document shall not be filed with the court."

The debtor in this case has not given the trustee a checklist for the Class 1 secured claim held by Jose Jimenez. This has delayed payment to this creditor to its prejudice. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

36. 09-91795-A-13G ANNER HERNANDEZ HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
7-6-09 [9]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

11 U.S.C. § 521(a)(1), Fed. R. Bankr. P. 1007(b) & (c), and Fed. R. Bankr. R. 3015(b) required that the debtor file schedules of assets and liabilities, a schedule of current income and expenditures, a schedule of executory contracts, a statement of current monthly income, and a proposed plan no later than 15 days after the filing of the petition. The 15-day period has expired without any of these documents being filed. By failing to timely file these documents, the debtor has delayed the prosecution of the case to the detriment of creditors. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

37. 09-91496-A-13G ROSITA GACASAN HEARING - MOTION FOR
RDG #1 ORDER OF DISMISSAL
6-9-09 [8]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The petition was filed on May 22. The debtor has not filed any schedules or statements required by 11 U.S.C. § 521(a)(1). The time to file those documents expired on June 6. See Fed. R. Bankr. P. 1007(c).

Further, when schedules and statements are not filed by the 45th day of a case, the case is automatically dismissed on the 46th day. See 11 U.S.C. § 521(i)(1). In this case, the 45th day was July 6. The schedules and statements were not filed on or before the 45th day. Thus, on July 7, the petition was automatically dismissed.

Despite dismissing the trustee's motion as moot, the court will deem the motion to be a request by a party in interest for an order confirming the prior automatic dismissal of the petition. See 11 U.S.C. § 521(i)(2). The trustee shall lodge a proposed order.