

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 31, 2017 at 1:00 p.m.

1. [16-27513](#)-B-13 HUMBERTO DIAZ MOTION TO DISMISS CASE
 JPJ-2 Pro Se 1-4-17 [[22](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to 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.

The court's decision is to dismiss the case.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$175.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Third, the Debtor did not appear at the meeting of creditors set for December 29, 2016, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fourth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fifth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Sixth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Seventh, the Debtor has filed four prior bankruptcy petitions but none were disclosed in this case. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

The court will enter an appropriate minute order.

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2. [16-27317](#)-B-13 BRIAN/KATHY BETLAN
JPJ-2 David Foyil

MOTION TO DISMISS CASE
1-17-17 [[46](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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.

The court's decision is to not dismiss the case.

The Trustee moves to dismiss the case due to Debtors' failure to file a certificate of completion from an approved nonprofit budget and credit counseling agency. 11 U.S.C. § 521(b)(1). The Debtors would not be eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h).

The Debtors filed a response on January 20, 2017, stating that they completed their pre-counseling class on October 25, 2016, and have filed it along with their amended petition on January 20, 2017.

Cause does not exist to dismiss this case. The motion denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

3. [16-26332](#)-B-13 PORTIA DASS
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-28-16 [[37](#)]

DEBTOR DISMISSED: 12/01/2016

Final Ruling: No appearance at the January 31, 2017, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court will enter an appropriate minute order.

4. [16-28048](#)-B-13 STANLEY CHARLES
John G. Downing

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-3-17 [[42](#)]

DEBTOR DISMISSED: 1/28/2017

Final Ruling: No appearance at the January 31, 2017, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot, with no sanctions ordered.

The court will enter an appropriate minute order.

5. [16-25580](#)-B-13 DEBORA FLORES ORDER TO SHOW CAUSE - FAILURE
Mohammad M. Mokarram TO PAY FEES
12-27-16 [[25](#)]

Final Ruling: No appearance at the January 31, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$70 due December 22, 2016. The court's docket reflects that the default was cured on December 29, 2016. The payment was the final installment.

The court will enter an appropriate minute order.

6. [16-26382](#)-B-13 ANDREY KOLESNIKOV ORDER TO SHOW CAUSE - FAILURE
Thru #7 Pro Se TO PAY FEES
11-30-16 [[30](#)]

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due November 28, 2016. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

7. [16-26382](#)-B-13 ANDREY KOLESNIKOV ORDER TO SHOW CAUSE - FAILURE
Pro Se TO PAY FEES
12-30-16 [[44](#)]

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

The court's tentative decision is to overrule the Order to Show Cause as moot, the case having been dismissed at Item #6.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due December 27, 2016. The court's docket reflects that this default and the earlier installment due November 28, 2016, have not been cured.

The court will enter an appropriate minute order.

8. [16-27285](#)-B-13 JORGE GARCIA AND MARIBEL MOTION TO DISMISS CASE
JPJ-1 ALEMAN 12-30-16 [[32](#)]
Thomas O. Gillis

CONTINUED TO 2/14/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO
VALUE COLLATERAL OF KAMALJIT TAKHAR.

Final Ruling: No appearance at the January 31, 2017, hearing is required.

The court will enter an appropriate minute order.

9. [16-27089](#)-B-13 LEONARDO MERCURIO
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-29-16 [[27](#)]

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

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

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due December 27, 2016. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

10. [16-27293](#)-B-13 ELLE RUBINGER
Mark Shmorgon

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-7-16 [[32](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$79.00 installment when due on December 2, 2016. While the delinquent installment was paid on December 9, 2016, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

11. [16-27793](#)-B-13 CYNTHIA/SANDRA KERR
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-3-17 [[22](#)]

Tentative Ruling: The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on December 28, 2016. While the delinquent installment was paid on January 18, 2017, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter an appropriate minute order.

12. [16-26597](#)-B-13 FAVIOLA VALENCIA-ARANDA CONTINUED OBJECTION TO
JPJ-1 AND JOSE ARANDA CONFIRMATION OF PLAN BY JAN P.
Peter G. Macaluso JOHNSON AND/OR MOTION TO
DISMISS CASE
11-8-16 [[29](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, feasibility depends on the granting of a motion to value collateral for Real Time Resolutions, Inc. in Class 2C. An evidentiary hearing on the motion to value collateral was heard on January 30, 2017, and the Debtors and creditor reached a settlement agreement, which changes the terms of the proposed plan filed October 3, 2016.

Second, feasibility depends on the granting of motions to avoid lien held by Araminta Hawkins in Class 2C, Certified Employment Group in Class 2C, and Leo Martinez in Class 2C. The hearing on the motions to avoid lien was scheduled for January 17, 2017, and denied.

The Trustee's remaining issues related to Debtors' failure to appear at the meeting of creditors and failure to provide additional information related to the schedules appears to have been resolved. The Debtors attended the continued meeting of creditors held on December 1, 2016, and filed amended schedules on December 22 and 28, 2016, and January 10, 2017.

For the first and second reasons stated above, the plan filed October 3, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to 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.

The court's decision is to dismiss the case.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,620.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, although a plan was filed on December 14, 2016, it was not included in the Notice of Chapter 13 Bankruptcy Case that was served on all parties on December 8, 2016. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). Additionally, 11 U.S.C. § requires that a confirmation hearing be held no earlier than 20 days and not later than 45 days after the date of the meeting of creditors. The meeting of creditors was held and concluded on December 29, 2016. The 45-day deadline set by 11 U.S.C. § 1324 will expire on February 14, 2017. Since the Debtor has not filed, set for hearing, and served a motion to confirm plan giving 42 days' notice of the hearing to confirm a plan, the court cannot timely conduct a confirmation hearing. See Fed. R. Bankr. P. 2002(b), Local Bankr. R. 9014-1(f)(1)(B).

Third, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fourth, the Debtor has not provided the Trustee with copies of certain items related to Debtor's operation of a daycare business including, but not limited to, a completed business examination checklist, income tax return for the 2014 year, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. The Debtor has not complied with 11 U.S.C. § 521.

Fifth, the Debtor has not disclosed the dates her daycare business has been in operation at question number 27 of the Statement of Financial Affairs. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has not complied with 11 U.S.C. § 521(a)(1).

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

The court will enter an appropriate minute order.