

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 20, 2018 at 2:00 p.m.

1. 17-28121-A-13 LALAINA JOHNSON MOTION TO
JPJ-2 DISMISS CASE
2-2-18 [16]

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

First, the debtor failed to appear at the meeting of creditors 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).

Second, the debtor has failed to commence making plan payments and has not paid approximately \$485 to the trustee as required by the proposed plan. This 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) & (c) (4).

Third, in violation of 11 U.S.C. § 521(a) (1) (B) (iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a) (3) & (a) (4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a) (3).

Fourth, 11 U.S.C. § 521(e) (2) (B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The debtor failed to provide the trustee with a copy of this return. This failure, and the debtor's inability to demonstrate that the failure to provide the copy to the trustee was due to circumstances beyond the control of the debtor, requires that the case be dismissed.

2. 17-23129-A-13 TIMOTHY NEHER MOTION TO
JPJ-1 DISMISS CASE
1-18-18 [206]

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

This case has been pending since May 2017 but the debtor has been unable to confirm a plan. It is doubtful the plan set for a confirmation hearing on February 26 will be confirmed inasmuch as the debtor has not used the court's current standard plan form and required by Local Bankruptcy Rule 3015-1(a) and for the several reasons laid out in the objections filed by the trustee and creditor Lendinghome, including the debtor's failure to cooperate with the trustee by furnishing him with the Class 1 checklist as required by Local Bankruptcy Rule 3015-1(b) (6), the fact that the debtor has made only one plan

payment in 8 months, and the dependence of the plan's feasibility on the debtor's ability to sell property even though the debtor has filed no evidence of the saleability of the property and the likelihood of a sale.

3. 17-26645-A-13 ERIC/ADINA HENDERSON MOTION TO
JPJ-2 DISMISS CASE
1-19-18 [26]

Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case dismissed.

The plan initially proposed by the debtor was denied confirmation on December 4. The debtor thereafter failed to 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).

4. 17-24878-A-13 ORASTINE HEAGLER MOTION TO
JPJ-2 DISMISS CASE
1-4-18 [41]

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

The plan initially proposed by the debtor was denied confirmation on October 10. The debtor thereafter failed to 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).

Also, the debtor has failed to commence making plan payments and has not paid approximately \$20,200 to the trustee as required by the plan not confirmed by the court. This 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) & (c)(4).