

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 29, 2015 at 10:00 a.m.

1. [14-29104](#)-B-13 WILLIAM DEHOFF MOTION TO DISMISS CASE
 JPJ-2 Pro Se 4-10-15 [[25](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion 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. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The Motion to Dismiss is granted.

First, the Debtor is \$11,253.78 delinquent in plan payments, which represents approximately 6 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$1,875.63 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, the Chapter 13 Trustee's Objection to Confirmation of Chapter 13 Plan was heard and sustained on December 19, 2014, and a review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

2. [15-21317](#)-B-13 EDUARDO MORALES
Michael Benavides

AMENDED ORDER TO SHOW CAUSE -
FAILURE TO PAY FEES
4-1-15 [[24](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Eduardo Morales ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 1, 2015. The court computes that 34 days' notice has been provided.

The court's decision is to discharge the Order to Show Cause.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due on March 23, 2015. The court's docket reflects that the default has been cured, a payment in the amount of \$160.00 having been paid on April 28, 2015.

3. [15-21418](#)-B-13 ANNE-MARIE FLORES
C. Anthony Hughes

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-1-15 [[27](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anne-Marie Flores ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 1, 2015. The court computes that 28 days' notice has been provided.

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due on March 27, 2015. The court's docket reflects that the default has been cured, a payment of \$160.00 having been paid on April 1, 2015.

4. [14-31229](#)-B-13 FLOYDETTIE JAMES
JPJ-2 Eric W. Vandermeij

MOTION TO DISMISS CASE
4-14-15 [[57](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion 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. If no opposition is offered at the hearing, the court will take up the merits of the motion.
The Motion to Dismiss is granted.

First, the Debtor is \$1,009.20 delinquent in plan payments, which represents approximately 1 partial plan payment. By the time this motion is heard, an additional plan payment in the amount of \$2,700.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Second, the Debtor's Motion to Confirm Amended Plan was heard and denied on March 18, 2015 and a review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting a plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

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

5. [15-22329](#)-B-13 GRACE/DONALD KENNEDY
Gary S. Saunders

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-7-15 [[11](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required. CASE DISMISSED
4/13/15.

6. [15-20232](#)-B-13 JASON NGUYEN
Thomas L. Amberg

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-19-15 [[59](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Jason Nguyen ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 19, 2015. The court computes that 41 days' notice has been provided.

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due on March 16, 2015. The court's docket reflects that the default has been cured, a payment of \$80.00 having been paid on March 20, 2015.

7. [15-21734](#)-B-13 JON BANISTER
Gordon G. Bones

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-18-15 [[11](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required. CASE DISMISSED
3/23/15.

8. [04-26357](#)-B-13 LARRY TEVIS/NANCY TEVIS MOTION TO DISMISS CASE
JPJ-3 Pro Se 3-30-15 [[408](#)]

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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Motion to Dismiss is granted.

Debtors' modified Chapter 13 plan was confirmed on July 18, 2005. The plan proposed monthly plan payments of \$1,916.00 for 3 months, \$1,532.00 for 1 month, \$1,300.00 for 32 months, a lump sum payment of \$65,000.00 in month 3 from the former Chapter 7 Trustee (when the case was converted from a case under Chapter 7 to Chapter 13), and a lump sum payment of \$13,100.00 in month 36 from the proceeds of a refinance or sale of the Debtors' residence and real property.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of \$14,000.00, which represents 1 monthly payment plan of \$1,300.00 and a lump sum payment of \$13,100.00 that was due in month 36, which was December of 2007. The Debtors have failed to make a plan payment to the Chapter 13 Trustee since December 14, 2007. There is cause to dismiss the case. 11 U.S.C. §§ 1307(c)(1) and (c)(6). The Debtors' monetary default under the plan is cause to dismiss the case.

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

9. [09-39967](#)-B-13 TIMOTHY WALTERS AND MARCY OBJECTION TO DEBTORS'
JPJ-2 COLBY-WALTERS CERTIFICATION AND ENTRY OF
James L. Brunello DISCHARGE BY JAN P. JOHNSON
3-23-15 [[73](#)]

Tentative Ruling: The Objection to Debtors' Certification and Entry of Discharge has been set for hearing on the 28-days 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The Objection to Debtors' Certification and Entry of Discharge is sustained and the Debtors are not entitled to a discharge.

The Trustee objects to Debtors' §1328 Certificate certifying that they were eligible for a Chapter 13 Discharge because they "have not received a Discharge in a Chapter 7 . . . Bankruptcy case filed within four (4) years prior to filing this case." (Dkts. 63 and 64). However, Debtors in fact received a Chapter 7 discharge in the prior four years preceding the filing of this bankruptcy case and are not entitled to discharge in this case.

In response, Debtors state that they incorrectly filled out and filed their §1328 Certificates stating that they had not received a Chapter 7 discharge in the four years prior to filing this case. Additionally, Debtors assert that this error was not made intentionally and they did not intend to mislead the court. The Debtors acknowledge that they are not entitled to a discharge in this Chapter 13 case.

For the foregoing reasons, the Debtors are not entitled to a discharge.

10. [14-30882](#)-B-13 JESSICA RAMSEY
Marc A. Caraska

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-9-15 [[44](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required. CASE DISMISSED
3/19/15

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion 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. 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.

The Motion to Dismiss is granted.

First, the plan will take a total of 84 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 24 months longer than the proposed commitment period of 60 months.

Second, the Debtor neither timely filed objections to claims nor timely filed a modified plan. The failure of the debtor to timely file objections to claims or timely file a modified plan constitutes and unreasonable delay by the debtor that is prejudicial to creditors. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

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

12. [15-20788](#)-B-13 DANIEL MIRANDA
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-8-15 [[37](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anne-Marie Flores ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on April 1, 2015. The court computes that 28 days' notice has been provided.

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due on April 3, 2015. The court's docket reflects that the default has been cured - a payment of \$74.00 having been paid on April 8, 2015, a second payment of \$77.00 having been paid on April 10, 2015, and a final payment of \$80.00 having been paid on April 13, 2014.

13. [15-20391](#)-B-13 ESMERELDA WYMORE
Brunella M. Palomino

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-26-15 [[38](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Anne-Marie Flores ("Debtor"), Trustee, and other such other parties in interest as stated on the Certificate of Service on March 26, 2015. The court computes that 34 days' notice has been provided.

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due on March 23, 2015. The court's docket reflects that the default has been cured, a payment of \$77.00 having been paid on April 3, 2015, and a payment of \$77.00 having been paid on April 22, 2015.

14. [15-20392](#)-B-13 DERWIN TERRY ORDER TO SHOW CAUSE - FAILURE
Thru #15 Pro Se TO PAY FEES
3-26-15 [[31](#)]

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 on March 23, 2015. The court's docket reflects that the default has not been cured.

15. [15-20392](#)-B-13 DERWIN TERRY MOTION TO DISMISS CASE
JPJ-2 Pro Se 3-4-15 [[27](#)]

Final Ruling: No appearance at the April 29, 2015 hearing is required.

The Motion to Dismiss has been set for hearing on the 28-days' 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-BuTrk (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.

First, the Debtor's credit counseling course was received on January 28, 2015, which is eight days after the petition was filed on January 20, 2015. The Bankruptcy Code requires that the credit counseling course be received during the 180-day period preceding the date of the filing of the petition for relief. 11 U.S.C. § 109(h)(1). Debtor has not show that an exception from the requirement applies or otherwise explained the failure to comply with the requirement.

Second, the Debtor did not appear at the Meeting of Creditors held on February 26, 2015 at 9:00 a.m. as required pursuant to 11 U.S.C. § 343. Failure to appear at the Meeting of Creditors is unreasonable delay that is prejudicial to creditors and cause to dismiss the case. 11 U.S.C. § 1307(c)(1).

Third, the Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Trustee argues that the Debtor did not provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Fifth, the Trustee seeks dismissal of the case on the basis that the Debtor is \$100.00 delinquent in plan payments, which represents approximately one (1) plan payment. By the time the hearing on this motion is held, two (2) additional plan payments in the amount of \$100.00 per month will also be due. The Debtor has not made any plan payments since this petition was filed on January 20, 2015. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c) (1) and (c) (4).

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

16. [15-20915](#)-B-13 RONALD/URSULA VIVIANI
JPJ-1 Joseph M. Canning

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
3-11-15 [[27](#)]

Tentative Ruling: The Objection to Plan was properly filed 14 days prior to the April 8, 2015, hearing on the motion to confirm a plan, which has been continued to April 29, 2015. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, 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).

The court's decision is to overrule the Objection and deny the Motion to Dismiss Case.

Feasibility of the plan depends on the granting of a motion to value collateral for Bank of America ("Creditor"), which was heard on April 27, 2015, at 1:30 p.m. before the Hon. Michael S. McManus. The valuation motion has been resolved by stipulation of the parties (Dkts. 39 and 46), in which the avoidance and release of Creditor's second deed of trust encumbering the real property at 741 Thereza Way, Rio Vista, California, is contingent upon the Debtor's completion of their Chapter 13 plan and their receipt of a Chapter 13 discharge. Upon plan completion and discharge, the Creditor shall reconvey the deed of trust within a reasonable time. This, in effect, eliminates the Trustee's final objection to confirmation.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, the Motion to Dismiss Case is denied, and the plan is confirmed.