

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 29, 2018 at 1:00 p.m.

1. [17-27707](#)-B-13 ANTHONY SIPPPIO MOTION TO DISMISS CASE
 [JPJ-3](#) Lucas B. Garcia 5-14-18 [[76](#)]

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 has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation was heard and sustained on January 23, 2018. The Debtor's motion to confirm amended plan was heard and denied on April 10, 2018. To date, the Debtor has not taken further action to confirm a plan in this case.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$5,445.00, which represents approximately 1.11 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$4,885.00 will also be due. Cause exists 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.

The court will enter an appropriate minute order.

2. [18-20011](#)-B-13 JASON/TIFFANIE RUPCHOCK ORDER TO SHOW CAUSE - FAILURE
Michael Benavides TO PAY FEES
4-9-18 [[35](#)]

Final Ruling: No appearance at the May 29, 2018, 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 Debtors' failure to pay \$77.00 due April 2, 2018. The court's docket reflects that the default was cured on April 9, 2018, and that a final installment was paid on April 26, 2018.

The court will enter an appropriate minute order.

3. [18-21512](#)-B-13 DENNIS/ROBIN COBB MOTION TO DISMISS CASE
[JPJ](#)-2 Mary Ellen Terranella 5-9-18 [[25](#)]

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.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of \$3,869.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,869.00 will also be due. Cause exists to dismiss this case pursuant to 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.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 29, 2018, hearing is required.

The Trustee's Motion to Dismiss Case 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)(B) 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 court's decision is to dismiss the case.

First, the Debtor has failed to prosecute this case causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Debtor's motion to confirm amended plan was heard and denied on March 6, 2018. To date, the Debtor has not taken further action to confirm a plan in this case.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,633.62, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$816.81 will also be due. Cause exists 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.

The court will enter an appropriate minute order.

5. [16-22152](#)-B-13 THOMAS/DENISE RAHMING
[JPJ](#)-3 Eamonn Foster

TRUSTEE'S NOTICE OF DEFAULT AND
APPLICATION TO DISMISS
3-28-18 [[119](#)]

Tentative Ruling: The Trustee's Notice of Default and Application 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)(B) 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 court's decision is to dismiss the case.

A Notice of Default and Application to Dismiss Case was filed on March 28, 2018, and provided a detailed notice to the Debtors that they must either pay a total of \$5,400.00 by April 27, 2018, file an objection if they believe there is no default by April 25, 2018, or file a modified plan and motion to confirm it within 30 days of the notice. The Debtors paid only \$1,800.00 by April 27, 2018. The Debtors do not dispute the default and have not filed a modified plan within the time permitted by Local Bankr. R. 3015-1(g) and the specific requirements detailed in the notice.

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

The court will enter an appropriate minute order.

6. [16-24559](#)-B-13 STEVEN SIPE
[LES](#)-1 Lucas B. Garcia

STATUS CONFERENCE RE: MOTION
FOR RELIEF FROM AUTOMATIC STAY
AND/OR MOTION TO CONFIRM
TERMINATION OR ABSENCE OF STAY
4-17-18 [[94](#)]

JAMES CARTER VS.

Tentative Ruling: The court issues no tentative ruling.

According to the court's order dated May 17, 2018 (dkt. 111), and ruling in the civil minutes dated May 15, 2018 (dkt. 110), the Debtor was permitted to file a motion or adversary proceeding for sanctions for violation(s) of the automatic stay for any acts by James A. Carter and Judith M. Cater, Trustees Revocable Trust Agreement of May 23, 1996, that the Debtor claims violated the automatic stay between July 13, 2016 and August 12, 2016.

Debtor's motion or adversary proceeding shall be filed by May 28, 2018. The hearing on this motion is continued to May 29, 2018, at 1:00 p.m. for a status conference and, if necessary, a scheduling conference if the Debtor elects to proceed by motion. If the Debtor proceeds by motion, the court will set deadlines for Movant's response and the Debtor's reply, set an evidentiary hearing, determine dates for Local Rule 9017-1 compliance, ascertain if discovery is needed, and address any other matters related thereto.

7. [18-21262](#)-B-13 JOHN SAECHAO
[JPJ](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
4-11-18 [[24](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally 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 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). 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.

Feasibility of the plan depends on the granting of a motion to avoid lien held by Capital One and the granting of a motion to value collateral for Schools Financial Credit Union, both matters which were heard on May 8, 2018. Although the motion to value collateral for Schools Financial Credit Union was granted (dkt. 33), the motion to avoid lien held by Capital One was denied without prejudice due to Debtor's failure to file an abstract of judgment. See dkt. 34.

The Debtor was given additional time to refile its motion to avoid lien held by Capital One and the court would hear the motion in conjunction with the Trustee's continued objection to confirmation and conditional motion to dismiss. See dkt. 32. However, as of May 22, 2018, the Debtor did not refile its motion to avoid lien.

Therefore, the plan filed March 5, 2018, 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 Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

8. [18-21266](#)-B-13 ANGELINA KUBRAKOVA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-10-18 [[21](#)]

DEBTOR DISMISSED: 04/20/2018

Final Ruling: No appearance at the May 29, 2018, hearing is required.

The case having been dismissed on April 20, 2018, the court's decision is to discharge the Order to Show Cause as moot.

The court will enter an appropriate minute order.

9. [18-22067](#)-B-13 PETER KAVADELES ORDER TO SHOW CAUSE - FAILURE
Michael Benavides TO PAY FEES
5-11-18 [[18](#)]

Final Ruling: No appearance at the May 29, 2018, 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 \$79.00 due May 7, 2018. The court's docket reflects that the default was cured on May 18, 2018, by payment of \$310.00. The payment constituted the final installment.

The court will enter an appropriate minute order.

10. [18-22073](#)-B-13 JOSE GALINDO
Steele Lanphier

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-11-18 [[17](#)]

Final Ruling: No appearance at the May 29, 2018, 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 \$79.00 due May 7, 2018. The court's docket reflects that the default was cured on May 15, 2018, by payment of \$310.00. The payment constituted the final installment.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 29, 2018, hearing is required.

The Trustee's Motion to Dismiss Case 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)(B) 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 court's decision is to dismiss the case.

First, the Debtor did not appear at the meeting of creditors set for April 19, 2018, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition. The certificate was received on December 20, 2016, and the petition was filed on March 14, 2018. Therefore, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

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).

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

The court will enter an appropriate minute order.

Tentative Ruling: The Notice of Intent to Dismiss Case if Documents Are Not Timely Filed 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). A supplemental points and authorities was filed by creditor U.S. Bank National Association. Debtor also filed an ex parte motion to dismiss.

The court's decision is to grant Debtor's ex parte motion to dismiss case. The Notice of Intent to Dismiss Case if Documents Are Not Timely Filed and U.S. Bank National Association's request for dismissal are denied as moot.

Debtor Jennifer A. Mize filed an ex parte motion to dismiss on May 11, 2018. For the reasons stated below, Debtor's motion to dismiss will be granted and this Chapter 13 case will be dismissed **with prejudice**. The with prejudice dismissal shall serve as a **bar** to the Debtor filing of a single or joint petition under any Chapter of the Bankruptcy Code for a period of **one (1) year** from the entry of the dismissal order.

Background

This is the sixth Chapter 13 case that the Debtor filed and thereafter failed to properly prosecute in the past three years. The Debtor's other cases, all of which were dismissed for the noted reasons, are as follows:

- (1) Case No. 15-24451, filed on June 1, 2015, and dismissed on June 19, 2015, for failure to timely file documents;
- (2) Case No. 15-25895, filed on July 27, 2015, and dismissed on August 14, 2015, for failure to timely file documents;
- (3) Case No. 16-23636, filed on June 2, 2016, and dismissed on July 27, 2016, for failure to pay an installment payment of the filing fee;
- (4) Case No. 16-26710, filed on October 7, 2016, and dismissed on December 15, 2016, pursuant to 11 U.S.C. § 109(g) for failure to appear in proper prosecution of the case.
- (5) Case No. 17-26899, filed on October 19, 2017, and dismissed on January 22, 2018, based on debtor's failure to disclose her prior Chapter 13 cases, § 109(g) ineligibility, failure to appear at the § 341 meeting, failure to make plan payments, filing a blank Chapter 13 plan, and failure to provide the trustee with payment advices and returns.

Discussion

A Chapter 13 debtor does not have an absolute right to dismiss. *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008). Moreover, the bankruptcy court may sua sponte dismiss a Chapter 13 case with prejudice in order to address a debtor's bad faith conduct and what it perceives as an abuse of the bankruptcy process. *Id.* at 774.

The general presumption under § 349(a) is a dismissal without prejudice; however, §

349(a) also permits the court to dismiss with prejudice. *Franco v. U.S. Trustee (In re Franco)*, 2016 WL 3 3227154, *5 (9th Cir. BAP 2016) (citation omitted). A finding of bad faith permits such a dismissal. *Id.* (citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1223-1224 (9th Cir. 1999)). Moreover, if a dismissal with prejudice for bad faith conduct is a permanent bar to refile a bankruptcy case, then dismissal with prejudice for bad faith conduct may include a lesser bar to refile, such as for a period of one year. *Id.* (citing *Johnson v. Vetter (In re Johnson)*, 2014 WL 11 2808977, at *7 (9th Cir. BAP 2014)).

A dismissal with prejudice is appropriate here. The Debtor's history of repeated filings without any effort to properly prosecute the filed bankruptcy case is bad faith conduct by the Debtor, a manipulation of the Bankruptcy Code, and the filing of bankruptcy cases in an inequitable manner and for an improper purpose.

Therefore, the Debtor's motion to dismiss will be granted; however, this Chapter 13 case will be dismissed with prejudice pursuant to 11 U.S.C. §§ 349(a) and 1307(c). The Debtor will be **barred** from filing a single or joint bankruptcy case under any chapter of the Bankruptcy Code for a period of **one (1) year** from the entry of this order.

The court will enter an appropriate minute order.

13. [18-20592](#)-B-13 TONG SIV
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-8-18 [[18](#)]

Final Ruling: No appearance at the May 29, 2018, 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 \$9.00 due May 3, 2018. The court's docket reflects that the default was cured on May 14, 2018, by payment of \$86.00. The payment constituted the final installment.

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 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 deny the motion as moot.

Debtors are in material default with respect to the terms of their confirmed plan. The Debtor's order confirming modified plan dated September 18, 2017, filed on November 16, 2017 (dkt. 24), states, "The Debtors shall pay into the plan all income tax refunds received in excess of \$2,500.00." The Debtors recently provided to the Trustee copies of their 2017 Internal Revenue Service and Franchise Tax Board returns. They show that Debtors received a refund of \$19,884.00 from the IRS and \$4,052.00 from the FTB for a combined refund of \$23,936.00. The Debtors have not turned over \$21,436.00 in tax refunds to the Trustee.

On May 25, 2018, the Debtors filed an ex parte application to dismiss case. An order was signed and filed on May 25, 2018, dismissing the case pursuant to 11 U.S.C. § 109(g)(1) and barring the Debtors from filing any single or joint bankruptcy case under any chapter of the Bankruptcy Code for a period of 180 days from entry of the order.

The case having been dismissed, the motion to dismiss is denied as moot.

The court will enter an appropriate minute order.