

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

**August 29, 2017 at 1:00 p.m.**

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1. [17-23902](#)-B-13 LUIS/FELICIA FLORES CONTINUED MOTION TO VALUE  
MOH-1 Michael O'Dowd Hays COLLATERAL OF WELLS FARGO BANK,  
**Thru #2** N.A.  
7-18-17 [[19](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

An order on stipulation was entered by the court on August 23, 2017. The motion to value collateral is dismissed as moot.

The court will enter an appropriate minute order.

2. [17-23902](#)-B-13 LUIS/FELICIA FLORES CONTINUED MOTION TO VALUE  
MOH-2 Michael O'Dowd Hays COLLATERAL OF ALLY FINANCIAL  
7-18-17 [[24](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

An order on stipulation was entered by the court on August 23, 2017. The motion to value collateral is dismissed as moot.

The court will enter an appropriate minute order.

**August 29, 2017 at 1:00 p.m.**

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3. [17-23809](#)-B-13 ROSE RODRIGUEZ ORDER TO SHOW CAUSE - FAILURE  
Thru #5 Pro Se TO PAY FEES  
7-11-17 [[20](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

The case having previously been dismissed at Item #5, the Order to Show Cause is discharged as moot.

The court will enter an appropriate minute order.

4. [17-23809](#)-B-13 ROSE RODRIGUEZ ORDER TO SHOW CAUSE - FAILURE  
Pro Se TO PAY FEES  
8-10-17 [[30](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

The case having previously been dismissed at Item #5, the Order to Show Cause is discharged as moot.

The court will enter an appropriate minute order.

5. [17-23809](#)-B-13 ROSE RODRIGUEZ MOTION TO DISMISS CASE  
JPJ-2 Pro Se 8-1-17 [[25](#)]

**Final Ruling:** No appearance at the August 29, 2017, 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)(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 court's decision is to grant the motion to dismiss.

Based on the failure of Debtor Rose Rodriguez ("Debtor") to appear before the court in the proper prosecution of this case the court will dismiss this case pursuant to 11 U.S.C. § 109(g)(1), which means the Debtor is not eligible to be a debtor in any other bankruptcy case for 180 days from the entry of the order dismissing this case. In making this determination, the court considers the Debtor's conduct in this case and the totality of the circumstances which includes similar conduct by the Debtor in her eight prior bankruptcy cases filed in the Eastern District of California identified as follows: (i) 11-20656; (ii) 11-48686; (iii) 12-34894; (iv) 14-27984; (v) 15-26202; (vi) 15-28538; (vii) 16-20567; and (viii) 16-22254.<sup>1</sup>

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<sup>1</sup>The court described the Debtor's conduct in her eight prior cases on the record in open court on August 15, 2017. Dkts. 33, 34. The court's statements are incorporated herein and made a part of the record for purposes of this decision.

With her petition, the Debtor filed a motion to pay the filing fee in installments. Dkt. 6. That motion was granted on August 6, 2017, and it required the Debtor to make the following installment payments: (i) \$79.00 on or before July 6, 2017; (ii) \$77.00 on or before August 7, 2017; (iii) \$77.00 on or before September 5, 2017; and (iv) \$77.00 on or before October 4, 2017. Dkt. 7. The Debtor failed to make the July 6, 2017, installment payment and an order to show cause why the case should not be dismissed was filed on July 11, 2017. Dkt. 20. The Debtor also failed to make the August 7, 2017, installment payment and a second order to show cause why the case should not be dismissed was filed on August 10, 2017. Dkt. 30.

In addition to her failure to make the ordered filing fee installment payments, the Debtor: (i) failed to appear at the § 341 meeting on July 20, 2017; (ii) is delinquent to the Trustee in at least the amount of \$3,100.00; (iii) has not made any plan payments since this case was filed on June 6, 2017; (iv) failed to provide the Trustee with necessary business documents and licenses; (v) failed to provide the Trustee with bank records; (vi) failed to provide the Trustee with tax returns; and (vii) failed to provide the Trustee with pay advices. Similar conduct by the Debtor in her eight prior cases, all of which were ultimately dismissed shortly after they were filed, is indicative of a bad faith filing of this case. The Debtor's conduct in those eight prior cases is also indicative of a pattern that demonstrates a lack of intent to properly prosecute this case. Therefore, for the foregoing reasons, the court will order this Chapter 13 case dismissed pursuant to 11 U.S.C. § 109(g)(1).

The court will enter an appropriate minute order.

6. [17-22712](#)-B-13 DENISE DOXIE  
JPJ-2 Pro Se

MOTION TO DISMISS CASE  
7-27-17 [[41](#)]

DISMISSED: 08/07/2017

**Final Ruling:** No appearance at the August 29, 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.

7. [17-24413](#)-B-13 EILEEN AIELLO  
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-7-17 [[17](#)]

**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 August 2, 2017. While the delinquent installment was paid on August 7, 2017, the fact remains that 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.

8. [17-24426](#)-B-13 BALTASAR MARTINEZ  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-9-17 [[27](#)]

**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 August 4, 2017. While the delinquent installment was paid on August 17, 2017, the fact remains that 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.

9. [17-23146](#)-B-13 RAYMOND CORREA  
Taras Kurta

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-13-17 [[32](#)]

DISMISSED: 08/03/2017

**Final Ruling:** No appearance at the August 29, 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.

10. [17-24252](#)-B-13 CHERYL HANSEN  
Scott D. Shumaker

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-2-17 [[53](#)]

DISMISSED: 08/08/2017

**Final Ruling:** No appearance at the August 29, 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.

11. [17-22359](#)-B-13 MARTY SAVSTROM  
JPJ-2 Mikalah R. Liviakis

MOTION TO DISMISS CASE  
8-1-17 [[28](#)]

**Final Ruling:** No appearance at the August 29, 2017, 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)(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 court's decision is to not dismiss the case.

Trustee moves to dismiss the case on grounds that the Debtor has failed to prosecute this case after the Trustee's objection to confirmation was heard and sustained on June 13, 2017. Trustee asserts that this is an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). However, it appears that the Debtor has filed an amended plan on August 22, 2017. Thus, the Debtor has not failed to prosecute this case.

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

The court will enter an appropriate minute order.

12. [17-23660](#)-B-13 DIANA BROOKS  
Candace Y. Brooks

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
8-4-17 [[34](#)]

**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 \$77.00 installment when due on July 31, 2017. While the delinquent installment was paid on August 8, 2017, the fact remains that 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.

13. [17-22263](#)-B-13 TRACY/RANDALL GAREWAL ORDER TO SHOW CAUSE - FAILURE  
Michael O'Dowd Hays TO PAY FEES  
7-10-17 [[23](#)]

**Final Ruling:** No appearance at the August 29, 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 Debtors' failure to pay \$77.00 due July 5, 2017. The court's docket reflects that the default was cured on August 4, 2017. The payment of \$152.00 constituted the final installment.

The court will enter an appropriate minute order.

**See Also #20**

**Tentative Ruling:** The Trustee's Motion to Dismiss Case 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 court's decision is to deny the Trustee's motion to dismiss case, grant Joint Debtor Michele Peterson's request to convert her Chapter 13 case to a Chapter 7, and deny Debtor Chance Peterson's request to dismiss his case Chapter 13 case and instead convert his Chapter 13 case to a Chapter 7.

The order confirming plan filed on August 17, 2016, states that the Debtors will pay to the Trustee all income tax refunds in excess of \$2,000.00. The tax refunds for the tax year 2016 indicate that the Debtors received a refund from the Internal Revenue Service in the amount of \$7,729.00 and a refund from the Franchise Tax Board in the amount of \$3,574.00. The Debtors' income tax refunds thus total \$11,303.00 and they must pay \$9,303.00 to the Trustee. The Debtors have not paid these additional funds to the Trustee.

The Debtors filed a response stating that they are unable turn over the funds because they had used the funds upon Debtor Chance Peterson's severe illness and hospitalization in the second half of 2016. Debtors assert that their household income was reduced and they experienced financial distress. Debtors further state that they forgot that their attorney might have verbally told them that a condition of confirmation was the turnover of funds. Debtors indicate that their attorney has proposed filing a modified plan but that they have not decided whether they want to sign a new plan or convert their case to a Chapter 7.

The Debtors filed another response on August 25, 2017, in which they now request conversion to Chapter 7 as a matter of right as to Joint Debtor Michele Peterson and dismissal as to Debtor Chance Peterson. Both requests are made under 11 U.S.C. § 1307.

The court will **GRANT** the request of Joint Debtor Michele Peterson to convert her Chapter 13 case to a Chapter 7 case and **DENY** the request of Debtor Chance Peterson to dismiss his Chapter 13 case and, in lieu of dismissal, will also convert Debtor Chance Peterson's Chapter 13 case to a Chapter 7 case. The decision to convert rather than dismiss Debtor Chance Peterson's case to a Chapter 7 case is a close call. However, it appears from the schedules that there may be some assets for a Chapter 7 trustee to administer and it also appears that the value of certain property may be understated.

A Chapter 13 debtor does not have an absolute right to dismiss. As the Ninth Circuit stated in *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008): "[W]e hold that the debtor's right of voluntary dismissal under § 1307(b) is not absolute, but is qualified by the authority of a bankruptcy court to deny dismissal on grounds of bad-faith conduct or 'to prevent an abuse of process.'" *Id.* at 774. *See also Metheny v. JL Beverage Co., LLC*, 2017 WL 661353 (Bankr. N.D. Cal. 2017) (discussing *Rosson* and authority of bankruptcy court to convert in lieu of dismiss).

There are two grounds that support conversion of Debtor Chance Peterson's Chapter 13 case to a Chapter 7 case: (1) bad faith conduct and abuse under § 1307(c); and (2) material default in the terms of a confirmed Chapter 13 plan under § 1307(c)(7). The bad faith and abusive conduct and the material default arise from the same conduct; namely, the Debtors' admitted (and joint) failure to turn over \$9,303.00 of their substantial \$11,303.00 from 2016 federal (\$7,729.00) and state (\$3,574.00) tax refunds

to the Trustee as required by the express terms of their confirmed plan.<sup>1</sup>

The Debtors claim they spent their 2016 federal and state tax refunds on medical expenses. Dkt. 63. However, there is no evidence of that. And even if that were the case, that does not excuse compliance with the terms of a confirmed plan or a request to modify the confirmed plan to adjust for purported expenses. The Debtors also state they "forgot" that their attorney "might have told [them] verbally" that they were required to turn over tax refunds. *Id.* That excuse is not credible because the Debtors' obligation to turn over future tax returns in excess of \$2,000.00 is clearly stated in the confirmation order entered on August 18, 2016. Dkt. 35. In short, there is cause under § 1307(c) for conversion of this Chapter 13 case to a Chapter 7 case for both debtors under § 1307(c).

Therefore, for the foregoing reasons, it is ordered that Joint Debtor Michele Peterson's request to convert her Chapter 13 case to a Chapter 7 case is granted.

It is further ordered that Debtor Chance Peterson's request to dismiss his Chapter 13 case is denied and in lieu of dismissal the Chapter 13 case of Debtor Chance Peterson shall also be converted to a Chapter 7 case.

The court will enter an appropriate minute order.

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<sup>1</sup>The Trustee requested tax returns from the Debtors on March 13, 2017. Dkts. 43. The Debtors did not respond to the Trustee's request and apparently only responded after the Trustee filed a motion to dismiss this Chapter 13 case on May 5, 2017. Dkt. 41, 46.

**Final Ruling:** No appearance at the August 29, 2017, 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)(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 court's decision is to dismiss the case.

First, 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).

Second, the Debtor did not appear at the meeting of creditors set for July 27, 2017, as required pursuant to 11 U.S.C. § 343.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,000.00, 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).

Fourth, the Debtor has failed to file, set for hearing, and serve a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3) and 3015-1(d)(1).

Fifth, the Debtor has failed to disclose any of the four previous cases in her petition filed in the Northern District of California in the past eight years. The case numbers are 13-45016, 13-41534, 12-49414 and 11-49636. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has failed to fully comply 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.

16. [10-50177](#)-B-13 WILLIE HYDE  
TJW-1 Timothy J. Walsh

CONTINUED MOTION TO AVOID LIEN  
OF BENEFICIAL CALIFORNIA INC  
7-19-17 [[36](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

This matter was continued from August 7, 2017, to allow the Debtor to file the abstract of judgment by August 14, 2017. If no opposition was filed by August 29, 2017, the court would grant the Debtor's motion to avoid lien and remove the matter from calendar.

No opposition as filed. Therefore, the court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Beneficial California, Inc. ("Creditor") against the Debtor's property commonly known as 924 Edwards Circle, Vallejo, California ("Property").

The Debtor asserts that judgment was entered against it in favor of Creditor in the amount of \$15,927.13 and recorded with the Solano County Recorder on September 2, 2010. An abstract of judgment was filed as an exhibit. Dkt. 44. All other liens recorded against the Property total \$201,681.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$150,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

17. [17-24079](#)-B-13 MARK TARASOV  
Mark Shmorgon

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-25-17 [[16](#)]

**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/s 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 July 20, 2017. While the delinquent installment was paid on August 2, 2017, the fact remains that 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.

18. [17-21681](#)-B-13 ALEJANDRO ESPITIA  
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
7-19-17 [[18](#)]

**Final Ruling:** No appearance at the August 29, 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 \$77.00 due July 14, 2017. The court's docket reflects that the default was cured on July 19, 2017. The payment was the final installment.

The court will enter an appropriate minute order.

19. [17-22885](#)-B-13 JANINE KING  
MJD-2 Matthew J. DeCaminada

CONTINUED MOTION TO CONFIRM  
PLAN  
6-16-17 [[28](#)]

**Tentative Ruling:** The Motion to Confirm the Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 was filed by Citimortgage, Inc. and Chapter 13 Trustee Jan Johnson.

The matter will be determined at the scheduled hearing.

This matter was continued from August 1, 2017, due to representation by Debtor's attorney at the August 1, 2017, hearing that the Debtor's residence is currently in escrow and this may resolve the issues raised by Citimortgage.

Citimortgage, Inc. objects to plan confirmation on grounds that the plan does not propose to cure pre-petition arrearages. The creditor holds a deed of trust secured by the Debtor's residence. The creditor's timely proof of claim asserts \$2,608.93 in pre-petition arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

Chapter 13 Trustee withdrew its objection to confirmation at the hearing on August 1, 2017.

20. [16-22964](#)-B-13 CHANCE/MICHELE PETERSON CONTINUED MOTION TO APPROVE  
RJ-2 Richard L. Jare LOAN MODIFICATION  
**See Also #14** 8-8-17 [[55](#)]

**Final Ruling:** No appearance at the August 29, 2017, hearing is required.

This matter was continued from August 22, 2017, to be heard in conjunction with the motion to dismiss case at Item #14. Since this Chapter 13 case has been converted to a Chapter 7 as to both Debtor Chance Peterson and Joint Debtor Michele Peterson for reasons stated at Item #14, the court's decision is to deny the motion to approve loan modification without prejudice.

The court will enter an appropriate minute order.