

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**October 17, 2016 at 2:00 p.m.**

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1. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER MOTION TO  
JPJ-4 DISMISS CASE  
9-26-16 [100]

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

First, the debtor has failed to pay to the trustee approximately \$8,956 as required by the plan. The foregoing 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).

Second, in breach of section 5.02 of the plan, the debtor failed to cooperate timely with the trustee and produce financial records relating to the debtor's business. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

2. 16-23137-A-13 NELLIE SCHNEIDER MOTION TO  
JPJ-3 DISMISS CASE  
9-29-16 [54]  
\$5,408.00 plan default

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

First, the debtor has failed to pay to the trustee approximately \$5,408 as required by the plan. The foregoing 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).

Second, the debtor did not file all income tax returns for all applicable tax periods during the 4-year period ending on the date of the filing of the petition. Specifically, the debtor failed to file federal income tax returns for the four years prior to 2016.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor had not filed pre-petition tax returns, the trustee might object to the plan on the ground of a lack of feasibility or because the plan had not been proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9<sup>th</sup> Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9<sup>th</sup> Cir. 1997).

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Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was concluded on August 11. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is now impossible for the debtor to comply with section 1308.

The failure to file these tax returns is cause for dismissal. See 11 U.S.C. § 1307(e).

3. 12-35581-A-13 KAREN LEAL  
JPJ-2

MOTION TO  
DISMISS CASE  
9-8-16 [38]

**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 the debtor 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be dismissed.

The trustee's Notice of Filed Claims was filed and served on May 16, 2013 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 78 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-03 which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under

former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

4. 16-22893-A-13 EMILY CARROLL MOTION TO  
JPJ-1 DISMISS CASE  
9-12-16 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

After the dismissal motion was filed, the debtor filed, served and set for hearing a motion to confirm a modified plan. It is set for hearing on November 7. Therefore, if the proposed modified plan is not confirmed at the November 7 hearing, the case will be dismissed on the trustee's ex parte application.