

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 27, 2018 at 1:00 p.m.

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1. [13-27721](#)-B-13 KEVIN/KRISTIN HIGHBAUGH OBJECTION TO DISCHARGE BY JAN
[JPJ](#)-2 Eric John Schwab P. JOHNSON
9-20-18 [[89](#)]

Final Ruling

The objection 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-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The objection is sustained and the Debtors are not entitled to a discharge.

Jan Johnson, the Chapter 13 trustee ("Trustee"), objects to debtors Kevin and Kristin Highbaugh's ("Debtors'") § 1328 certificate, which certifies eligibility 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. 78, 79. Trustee notes that Debtors did receive a Chapter 7 discharge in the prior four years preceding the filing of this bankruptcy case (case no. 11-28273), the parties filed a stipulation waiving discharge that was approved by this court on August 30, 2013 (dkt. 43), and Debtors filed two § 1328 certificates, but withdrew the certificate that stated Debtors had not received a Chapter 7 discharge (dkts. 78, 79, 84). Thus, Trustee argues that Debtors are not entitled to a discharge in this case. The court agrees.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2. [18-25321](#)-B-13 VICTORIA BOONE
Stanley P. Berman

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-29-18 [[31](#)]

DEBTOR DISMISSED: 10/31/2018

Final Ruling

The court's decision is to discharge the order to show cause as moot, as the case was dismissed on October 31, 2018. Dkt. 36.

THE COURT WILL PREPARE A MINUTE ORDER.

3. [18-25236](#)-B-13 VICTORIA JIMENEZ ORDER TO SHOW CAUSE - FAILURE
Peter G. Macaluso TO PAY FEES
10-25-18 [[25](#)]

Final Ruling

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 October 22, 2018. Dkt. 25. The court's docket reflects that the default was cured on November 5, 2018. The payment constituted the final installment.

THE COURT WILL PREPARE A MINUTE ORDER.

4. [18-26237](#)-B-13 YGNACIO RIOS
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-6-18 [[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 debtor Ygnacio Rios ("Debtor") to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. Dkt. 9. The Debtor failed to pay the \$79.00 installment when due on November 1, 2018. Dkt. 16. While the delinquent installment was paid on November 15, 2018, 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 PREPARE A MINUTE ORDER.

5. [18-25455](#)-B-13 GWENDOLYN/HORACE SIMPSON
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
11-2-18 [[27](#)]

DEBTOR DISMISSED: 11/6/2018
JOINT DEBTOR DISMISSED:
11/6/2018

Final Ruling

The court's decision is to discharge the order to show cause as moot, as the case was dismissed on November 6, 2018. Dkt. 31.

THE COURT WILL PREPARE A MINUTE ORDER.

6. [15-22662](#)-B-13 DENNIS MAGURES
[JPJ](#)-6 Scott D. Hughes

MOTION TO DISMISS CASE
11-1-18 [[32](#)]

No Ruling

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). 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. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

Trustee's Objection

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed the objection on October 25, 2018. Dkt. 63.

First, debtor Rajindar Singh ("Debtor") had not provided Trustee with a copy of an income tax return for the most recent tax year a return was filed. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, Trustee conducted a preliminary investigation and asserts that, collectively, there is \$150,502.12 in non-exempt equity that would be distributed to unsecured creditors if the case were converted to a Chapter 7. Trustee notes there are no priority unsecured creditors listed on Debtor's plan, and the proposed plan pays only 33.5% of \$103,018.00 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Third, Trustee reviewed the schedules and forms filed by Debtor upon conversion of this case from Chapter 7 to Chapter 13. Trustee notes that Debtor did not list her average monthly income for herself and her non-filing spouse on Form 122C-1, filed September 20, 2018. Based on Schedule I, where Debtor held the same job for 11 years and her non-filing spouse held the same job for the past 5 years, Trustee estimates gross monthly income of approximately \$8,061.50, plus \$1,300.00 of other income, for a total annual income of \$112,338.00. Because this income is higher than the median family income for a household of 4, Debtor should file Forms 122C-1 and 122C-2.

Fourth, Debtor testified at the Meeting of Creditors that she did not list 4 bank accounts on her Schedule A/B, and requested pay advices for Debtor and her non-filing spouse. Debtor has not provided those pay advices, and no amended schedules have been filed. Debtor has not complied with 11 U.S.C. § 521(a)(3).

November 13, 2018 Hearing

The court continued the matter to allow the parties to resolve any outstanding objections. Dkt. 81.

Discussion

The court notes that Debtor filed Forms 122C-1 and 122C-2, Amended Schedule J, and an Amended Summary of Schedules on November 12, 2018. Dkts. 78, 79. In addition, Debtor is proposing a 100% plan, which resolves Trustee's objection to the liquidation analysis required by 11 U.S.C. § 1325(a)(4).

However, neither party submitted supplemental pleadings to demonstrate that Debtor provided Trustee with a copy of the most recent tax return as required by 11 U.S.C. § 521(e)(2)(A)(1). On these grounds, the court finds that the plan filed September 20, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

8. [18-25185](#)-B-13 KIM CLARK
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-23-18 [[27](#)]

Tentative Ruling

The court's decision is to discharge the order to show cause as moot, as the case was dismissed on November 20, 2018. Dkts. 40, 41.

THE COURT WILL PREPARE A MINUTE ORDER.

9. [18-23886](#)-B-13 MARILYN WALKER MOTION TO DISMISS CASE
[JPJ](#)-2 Bruce Charles Diggins 10-17-18 [[22](#)]

No Ruling

10. [18-23787](#)-B-13 SONYA EVETTE MORRIS
George T. Burke

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-22-18 [[37](#)]

Final Ruling

The court's decision is to discharge the order to show cause as moot, as the case was dismissed on November 20, 2018. Dkts. 40, 41.

THE COURT WILL PREPARE A MINUTE ORDER.

11. [17-25090](#)-B-13 MARTHA RAMIREZ
[PGM](#)-5 Peter G. Macaluso

CONTINUED OBJECTION TO CLAIM OF
CITIBANK, N.A., CLAIM NUMBER 6
7-25-18 [[104](#)]

No Ruling

12. [16-27293](#)-B-13 ELLE RUBINGER
[JPJ](#)-5 Mark Shmorgon

MOTION TO DISMISS CASE
10-29-18 [[100](#)]

No Ruling

Final Ruling

The motion 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-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion and order the case dismissed.

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed the motion to dismiss on October 29, 2018. Dkt 21.

First, debtors Richard and Rachel Allen ("Richard" or "Rachel" individually, "Debtors" collectively) are delinquent approximately 1 plan payment in the amount of \$1,900.00.

Second, Debtors did not appear at the meeting of creditors set for October 18, 2018, as required pursuant to 11 U.S.C. § 343.

Third, Debtors did not provide Trustee with copies of certain business documents for their businesses, Richard Allen Construction and Affordable Events, including a completed business examination checklist, income tax returns for the two-year period prior to filing the petition, bank account statements for the six-month period prior to filing the petition, and proof of all insurance, licenses, and/or permits. Thus, Debtors have not complied with 11 U.S.C. § 521.

Based on the evidence submitted, and the defaults entered against the parties in interest that failed to file a response as required by Local Bankruptcy Rule 9014-1(f)(1)(B), the court finds that cause exists to dismiss the case pursuant to 11 U.S.C. § 1307(c).

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.