

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

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

1. [17-28002](#)-B-11 ERLINDA GIL MOTION TO DISMISS CASE
 [JPJ](#)-1 Arasto Farsad 1-26-18 [[49](#)]

Final Ruling: No appearance at the February 27, 2018, hearing is required.

The case having been converted to a Chapter 11 on February 7, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

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

Final Ruling: No appearance at the February 27, 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 January 18, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,800.05, which represents approximately 1 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$1,800.05 will also be due. The Debtor has not made any plan payments since the petition was filed on December 11, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

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).

Fourth, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fifth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(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.

3. [17-27928](#)-B-13 TIMOTHY CLARK
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-17-18 [[33](#)]

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 \$86.00 installment when due on January 12, 2018. While the delinquent installment was paid on February 16, 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 enter an appropriate minute order.

4. [17-28137](#)-B-13 MICHAEL LAMBERT
[JPJ](#)-1 Thomas L. Amberg

MOTION TO DISMISS CASE
2-9-18 [[22](#)]

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.

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,472.00, which represents approximately 1 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$1,472.00 will also be due. The Debtor has not made any payments since this petition was filed on December 15, 2017. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Debtor has filed a response of non-opposition.

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

The court will enter an appropriate minute order.

5. 17-28053-B-13 CHARLIE BALANGUE MOTION TO DISMISS CASE
 JPJ-1 Peter G. Macaluso 1-26-18 [[29](#)]

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)(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 not dismiss the case provided that the Debtor has cured his delinquency and is current on plan payments at the time of the hearing.

First, although the Debtor failed to appear at the first meeting of creditors set for January 18, 2018, the Debtor did appear at the continued meeting of creditors set for February 15, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor stated in his response that he has served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Provided that the Debtor has cured his delinquency and is current on plan payments, cause does not exist to dismiss this case. The motion will be denied without prejudice.

The court will enter an appropriate minute order.

6. [17-27458](#)-B-13 CARMEN HALAMANDARIS
T. Mark O'Toole

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
1-17-18 [[25](#)]

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 January 12, 2018. While the delinquent installment was paid on January 29, 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 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 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 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, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,732.03, which represents approximately 1 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$2,732.03 will also be due. The Debtor does not appear to be able to make plan payments proposed. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, the Trustee requested that the Debtor amend Schedule A/B to disclose assets related to Debtor's authored books, copyrights for those books, and a website that she uses to sell her books. To date, no amendments have been filed. The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3). Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (6).

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 February 27, 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.

Debtor's plan understates the total amount of unsecured non-priority claims at \$10,946.44. The confirmed plan will take a total of 110 months to complete, which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). Pursuant to Local Bankr. R. 3007-1(d), the Debtor was required to object to claims within 60 calendar days after service of the Notice of Filed Claims and/or file and serve a modified plan and motion to confirm it within 90 calendar days after service of the Notice of Filed Claims. Debtor neither timely filed objections to claims not timely filed a modified plan. The failure of the Debtor to timely file objections to claims or timely file a modified plan constitutes an unreasonable delay by the Debtor that is prejudicial to creditors. Cause exists to dismiss the case pursuant to 11 U.S.C. § 1307(c)(1).

The case is currently in month 49 and will be in month 50 on the date this motion is heard.

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

The court will enter an appropriate minute order.