

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 20, 2018 at 1:00 p.m.

1.	17-27902 -B-13	ROSEMARY SIMMONS	ORDER TO SHOW CAUSE - FAILURE
		Richard L. Jare	TO PAY FEES
			2-7-18 [74]

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 February 2, 2018. While the delinquent installment was paid on February 13, 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.

March 20, 2018 at 1:00 p.m.

Page 1 of 15

2. [17-27928](#)-B-13 TIMOTHY CLARK
[JPJ](#)-1 Pro Se

MOTION TO DISMISS CASE
3-6-18 [[53](#)]

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 file a standard Chapter 13 Form Plan as required pursuant to Local Bankr. R. 3015-1(c)(1) and 11 U.S.C. § 521(a)(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. Therefore, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

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

The court will enter an appropriate minute order.

3. [18-20033](#)-B-7 DANIEL MCLIND MOTION TO DISMISS CASE
 [JPJ](#)-1 Arasto Farsad 2-28-18 [[34](#)]

CONVERTED: 3/07/18

Final Ruling: No appearance at the March 10, 2018, hearing is required.

The case having been converted on March 7, 2018, the motion to dismiss case is denied as moot.

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 conditionally deny the motion.

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$740.00, which represents approximately 2 plan payments. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). During the pendency of this case, the Chapter 13 Trustee has filed eight (8) Notices of Default and Applications to Dismiss. The Debtor does not appear to be able to make plan payments.

In response, Debtor states that he fell delinquent due to being ill and hospitalized for some time after a gall bladder surgery. Debtor acknowledges that he has fallen delinquent several times over the last four years of his plan but that those delinquencies were due to sporadic business periods and that he was able to renew his business income and cure the delinquencies. Debtor states that he has now recovered from his illness and has returned to work. Debtor asserts that he will be able to cure the delinquency caused by his hospitalization and be current under his plan by March 19, 2018. If the Debtor is not current at the time of the hearing, the case will be dismissed.

Further, due to the number of Notices of Default filed by the Trustee, as a condition of not dismissing this case the Debtor shall remain current and shall make the next six (6) plan payments when and in the amount due beginning with the plan payment due March 25, 2018. If the Debtor fails to timely make any plan payment during the six-month period, the case may be dismissed at the Trustee's ex parte motion.

The matter will be determined at the scheduled hearing.

5. [17-23739](#)-B-13 JUAN CALZADA MOTION TO DISMISS CASE
[JPJ](#)-1 Stephen M. Reynolds 3-6-18 [[46](#)]

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 \$7,720.00, which represents approximately 2 plan payments. 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.

6. [18-20749](#)-B-13 JACKIE MELLOW
Scott J. Sagaria

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-26-18 [[10](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$310.00 in connection with the filing of a petition under Chapter 13 on February 12, 2018. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

7. [18-20352](#)-B-13 CRYSTAL JOHNSON
Pro Se

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

CASE DISMISSED: 3/09/18

Final Ruling: No appearance at the March 20, 2018, hearing is required.

The court's decision is to dismiss the Order to Show Case as moot. The case was dismissed on March 9, 2018.

The court will enter an appropriate minute order.

8. [17-20556](#)-B-13 STEPHANIE GRIESS MOTION TO DISMISS CASE
[JPJ](#)-2 Ashley R. Amerio 3-6-18 [[30](#)]

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 \$9,092.00, which represents approximately 4 plan payments. 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.

9. [12-41058](#)-B-13 LAUREEN RUSS
Michele Garfinkel

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-14-18 [[87](#)]

Final Ruling: No appearance at the March, 20, 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 \$25.00 in connection with filing of an assignment/transfer of claim from Specialized Loan Servicing LLC to ARCPE 1, LLC. The court's docket reflects that the default was cured on February 22, 2018. The payment constituted the final installment.

The court will enter an appropriate minute order.

10. [17-27458](#)-B-13 CARMEN HALAMANDARIS
[JPJ](#)-2 T. Mark O'Toole

MOTION TO DISMISS CASE
2-28-18 [[38](#)]

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 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 of Chapter 13 plan was heard and sustained on January 16, 2018, and the Debtor has not taken further action to confirm a plan in this case.

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

The court will enter an appropriate minute order.

11. [17-27167](#)-B-13 WILLIAM NADO MOTION TO DISMISS CASE
[JPJ](#)-1 Mikalah R. Liviakis 3-2-18 [[55](#)]

CONVERTED: 3/19/18

Final Ruling: No appearance at the March 10, 2018, hearing is required.

The case having been converted on March 19, 2018, the motion to dismiss case is denied as moot.

The court will enter an appropriate minute order.

12. [17-25371](#)-B-13 SALLY ALLEN
[JPJ](#)-2 Gary Ray Fraley

MOTION TO DISMISS CASE
2-28-18 [[52](#)]

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 Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,865.00, which represents approximately 1 plan payment. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Second, 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 plan was heard and denied on October 17, 2017, and another motion to confirm was heard and denied on February 6, 2018. The Debtor has failed to take further action to confirm a plan in this case.

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

The court will enter an appropriate minute order.

13. [13-35778](#)-B-13 FRANK/JOSIE OLIVAS
[WW-4](#) Mark A. Wolff

CONTINUED MOTION OBJECTION TO
DEUTSCHE BANK NATIONAL TRUST
COMPANY'S RESPONSE TO NOTICE OF
FINAL CURE
12-6-17 [[53](#)]

Tentative Ruling: The Debtors' Objection to Deutsche Bank National Trust company's Response to Notice of Final Cure 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

This matter was continued from January 23, 2018, and again from February 20, 2018, to provide Debtors and Deutsche Bank National Trust Company additional time to work toward a resolution as requested by creditor. If no resolution is reached by the date of this hearing, the court will set an evidentiary 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 conditionally deny the motion.

Debtor is delinquent to the Chapter 13 Trustee in the amount of \$230.00, which represents approximately 2 plan payments. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). During the pendency of this case, the Chapter 13 Trustee has filed eight (8) Notices of Default and Applications to Dismiss.

Debtor has filed a response stating that she remitted payment in the sum of \$230.00 to the Trustee on March 12, 2018, and that this has brought her current on plan payments.

Nevertheless, due to the number of Notices of Default filed by the Trustee, as a condition of not dismissing this case the Debtor shall remain current and shall make the next six (6) plan payments when and in the amount due beginning with the plan payment due March 25, 2018. If the Debtor fails to timely make any plan payment during the six-month period, the case may be dismissed at the Trustee's ex parte motion.

Cause does not exist to dismiss this case. The motion is conditionally denied and the case is not dismissed.

The court will enter an appropriate minute order.

15. [17-25899](#)-B-13 CARLOS/ROBIN ROBLES
[CYB](#)-5 Candace Y. Brooks

CONTINUED OBJECTION TO CLAIM OF
WELLS FARGO BANK, N.A., CLAIM
NUMBER 5
11-16-17 [[78](#)]

Tentative Ruling: The Objection to Claim Number 5 Filed by Wells Fargo Bank, N.A. has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.

This matter has been continued from December 19, 2017, to February 6, 2018, to February 20, 2018, and finally to March 20, 2018.

At the December 19, 2017, hearing, the court continued the matter to allow recently substituted counsel for Wells Fargo Bank, N.A. to review the case and request updated payment history and detailed escrow analysis from Wells Fargo.

At the February 6, 2018, hearing, the court determined on a tentative basis that the September 2017 payment constituted a post-petition payment and that there is no pre-petition delinquency.

At the February 20, 2018, hearing, the court provided Wells Fargo Bank, N.A. 30 days to file an amended proof of claim. An amended proof of claim was filed on March 15, 2018, and the amount in default is \$0.00 as of the date of the petition.

The matter will be determined at the scheduled hearing.