

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: March 30, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

March 30, 2021 at 1:00 p.m.

1. [16-90219](#)-B-13 SHARON HAMILTON MOTION TO DISMISS CASE
[RDG](#)-8 David C. Johnston 3-15-21 [[286](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally deny the motion to dismiss.

The Chapter 13 Trustee ("Trustee") moves to dismiss the case on two grounds. First, debtor Sharon Hamilton's ("Debtor") payments to the Trustee are not current under the plan confirmed by Debtor and there is a material default with respect to a term of that confirmed plan. As of March 15, 2021, plan payments under the plan are delinquent in the sum of \$37,106.00. The last payment was received on March 11, 2021. 11 U.S.C. § 1307(c)(6).

Second, over a period of five months in 2020 the Debtor was repeatedly provided with the opportunity to file, set, and serve a new plan, motion to confirm plan, and a motion to sell real property which she failed to do resulting in denial of the then long-continued motion to modify on May 5, 2020. A subsequent modified plan and motion to modify were filed and set for hearing on February 16, 2021. The subsequent modified plan again provided for the sale of real property. However, the Debtor again failed to file a motion to sell. When the trustee objected to the last proposed modified plan on January 26, 2021, the Debtor withdrew it on February 9, 2021. To date, the Debtor has failed to file, set, and serve a modified plan, a motion to confirm, and a motion to sell. The failure of the Debtor to perform is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Although the motion to dismiss was filed, set, and served under Local Bankr. R. 9014-1(f)(2) and an opposition is not required, the Debtor nevertheless filed an opposition on March 23, 2021. Dkt. 290. The opposition states that the Debtor opposes the motion and would like an opportunity to respond to the issues.

Local Bankr. R. 9014-1(f)(2) states that "[i]f opposition is presented . . . the Court may continue the hearing to permit the filing of evidence and briefs." Local Bankr. R. 9014-1(f)(2)(C) (emphasis added). In other words, if, as is the case here, an opposition is filed the court may - or it may not - need further briefing. The latter is applicable here. The court does not need further briefing.

The court has determined that further briefing is unnecessary, primarily, because of the substantial delinquency and delay in this case, the Debtor's repeated failure to perform and prosecute the case as stated above, and because the Debtor's request for further briefing on the motion to dismiss appears to the court to be an attempt by the

March 30, 2021 at 1:00 p.m.

Debtor to further delay the filing of a modified plan and/or a motion to sell. Further briefing is also unnecessary because the Trustee's motion to dismiss will be conditionally denied.

The Debtor shall have 45 days from March 30, 2021, to confirm a modified plan. If a modified plan provides for a sale of real property, the Debtor shall also file, set, and serve a motion to sell to be heard concurrently with the hearing on the motion to confirm the modified plan. Given the extent of the Debtor's default, delay, and non-performance in this case no further extensions shall be granted absent compelling and extraordinary circumstances. If the Debtor fails to comply with any aspect of this ruling - to be incorporated into the court's order - the case may be dismissed on the Trustee's ex parte application.

The motion to dismiss is ordered CONDITIONALLY DENIED for the reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally grant the motion to dismiss case and **continue the matter to April 6, 2021, at 1:00 p.m.**

The Chapter 13 Trustee's objection to confirmation of Debtor's plan was heard on February 2, 2021, and the court sustained the objection and denied confirmation of the plan. Debtor has failed to file, set and serve an amended/modified plan to date. The failure of the Debtor to perform is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 2, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 6, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 6, 2021, at 1:00 p.m.

The court will issue an order.

3. [20-90755](#)-B-13 DAVID TOUCHSTONE
Brian S. Haddix

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
2-26-21 [[28](#)]

Final Ruling

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's 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 \$77.00 due February 22, 2021. The court's docket reflects that the default has not been cured.

The order to show cause is ORDERED SUSTAINED for reasons stated in the minutes and the case is DISMISSED.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally grant the motion to dismiss case and **continue the matter to April 6, 2021, at 1:00 p.m.**

The Chapter 13 Trustee's objection to confirmation of Debtors' plan was heard on February 16, 2021, and the court sustained the objection and denied confirmation of the plan. Debtors have failed to file, set and serve an amended/modified plan to date. The failure of the Debtors to perform is an unreasonable delay that is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Cause exists to dismiss this case. The motion is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, April 2, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on April 6, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on April 6, 2021, at 1:00 p.m.

The court will issue an order.

5. [21-90080](#)-B-13 PAUL BRAGER
[RK-1](#) Richard Kwun

CONTINUED MOTION TO VALUE
COLLATERAL OF MATCO TOOLS CO.
3-6-21 [[8](#)]

Final Ruling

This matter was continued from March 23, 2021, to allow any opposition or response to be filed by 5:00 p.m. Friday, March 26, 2021, in response to Debtor's motion to value collateral of Matco Tools Co. No response was filed. The court's ruling conditionally granting the motion, dkt. 19, shall be the court's final ruling. The continued hearing on March 30, 2021, at 1:00 p.m. is vacated.

The court will issue an order.