

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**March 30, 2016 at 10:00 a.m.**

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1. [15-29704](#)-B-13 GARY HORTON CONTINUED OBJECTION TO  
JPJ-1 Allan R. Frumkin CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
1-28-16 [[12](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

This matter was first heard on February 17, 2016, continued to March 2, 2016, and continued again to March 30, 2016. These continuances were due to Debtor's required attendance at § 341 meetings held on February 18, 2016, and March 17, 2016, and to allow the Debtor to file certain sets of taxes. The Debtor failed to appear at both § 341 meetings and it is uncertain whether the Debtor has provided the Trustee with the required taxes. The court will entertain argument from counsel of record on March 30, 2016, as to why this case should not be dismissed based on the Debtor's repeated failure to appear at the continued § 341 meetings.

**March 30, 2016 at 10:00 a.m.**

2. [15-24706](#)-B-13 JANICE POYTHRESS  
JPJ-1 Douglas B. Jacobs

MOTION TO CONVERT CASE TO  
CHAPTER 7 OR MOTION TO DISMISS  
CASE  
2-26-16 [[18](#)]

**Tentative Ruling:** The court issues no tentative ruling

The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative 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)(ii) 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.

3.     [15-29807](#)-B-7     TRACI HERRERA     MOTION TO DISMISS CASE  
         JPJ-2           James L. Keenan     2-19-16 [[23](#)]

CASE CONVERTED TO CHAPTER 7  
ON 2/26/16

**Final Ruling:** No appearance at the March 30, 2016, hearing is required.

4. [15-29510](#)-B-13 OSCAR/LILIA BARROGA CONTINUED MOTION TO VALUE  
FF-1 Gary Ray Fraley COLLATERAL OF CARMAX  
**Thru #5** 2-8-16 [[20](#)]

**Tentative Ruling:** This matter was continued from March 16, 2016, in order to allow the Debtors to properly serve Carmax. Creditor Carmax was not properly served at the address where notices should be sent and was instead served at the address where payments are sent. The court's docket does not reflect that the Debtors have filed an amended proof of service.

The matter will be determined at the scheduled hearing.

5. [15-29510](#)-B-13 OSCAR/LILIA BARROGA CONTINUED OBJECTION TO  
JPJ-1 Gary Ray Fraley CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
1-28-16 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

This matter was first continued from February 17, 2016, to be heard in conjunction with the motion to value collateral of Carmax and again continued from March 16, 2016, in order to allow the Debtors to properly serve Carmax. The Trustee's other objections relating to delinquency in plan payments and the need to amend Schedule J have been resolved.

However, based on denial of Item #4 Continued Motion to Value Collateral of Carmax, the court's decision is to sustain the objection and conditionally deny the motion to dismiss.

6. [16-20613](#)-B-13 URAL THOMAS  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
3-9-16 [[20](#)]

**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 \$79.00 installment when due on March 4, 2016. While the delinquent installment was paid on March 10, 2016, the fact remains 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.

**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 did not appear at the first meeting of creditors set for March 3, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor did not complete and file a credit counseling briefing during the 180 day period preceding the date of the filing of the petition pursuant to 11 U.S.C. § 190(h).

Third, the Debtor has not provided the Trustee with a copy of her 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).

Fourth, the Debtor has not provided the Trustee with copies of her 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).

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

8. [16-20127](#)-B-13 JESUS AVILA  
Michael O'Dowd Hays

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-16-16 [[23](#)]

**Final Ruling:** No appearance at the March 30, 2016, hearing is required.

The court's decision is to discharge the Order to Show Cause with no further sanctions and the case will proceed under Chapter 7.

The Order to Show Cause was issued due to Debtor's failure to pay the \$79.00 filing fee installment due February 10, 2016. The court's docket reflects that the entire filing fee of \$310.00 was paid on March 25, 2016. Additionally, this case was voluntarily converted on March 23, 2016, and the conversion fee of \$25.00 was paid on March 23, 2016. The case will proceed under Chapter 7.

9.     [10-44131](#)-B-13     RAPHAEL METZGER AND                     MOTION TO DISMISS CASE  
         JPJ-4           MELANIE MEDINA-METZGER             2-29-16 [[242](#)]  
                          Peter G. Macaluso

**Tentative Ruling:** The court issues no 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)(ii) 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.



10. [16-20634](#)-B-13 CARL TINNEY AND EILEEN MOTION TO DISMISS CASE  
JPJ-2 RICKENBACH 3-7-16 [[20](#)]  
Peter L. Cianchetta

**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 Debtors, 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.

The schedules reflect that the Debtors owe more than \$383,175.00 in non-contingent, liquidated, unsecured debts, which means they are not eligible for relief under Chapter 13 pursuant to 11 U.S.C. § 109(e). *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). Debtors' schedules filed on February 4, 2016, show a total of non-contingent, liquidated unsecured debt at \$404,005.54.

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

11. [16-20065](#)-B-13 PALASTINE SPEARMAN  
Pro Se

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-11-16 [[30](#)]

CASE DISMISSED: 03/03/2016

**Final Ruling:** No appearance at the March 30, 2016, hearing is required.

12. [16-20567](#)-B-13 ROSE RODRIGUEZ ORDER TO SHOW CAUSE - FAILURE  
[Thru #13](#) Pro Se TO PAY FEES  
3-7-16 [[21](#)]

**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 \$79.00 due March 2, 2016. The court's docket reflects that the default has not been cured.

13. [16-20567](#)-B-13 ROSE RODRIGUEZ MOTION TO DISMISS CASE  
JPJ-2 Pro Se 3-7-16 [[26](#)]

**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 did not appear at the first meeting of creditors set for March 3, 2016, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor did not complete and file a credit counseling briefing during the 180 day period preceding the date of the filing of the petition pursuant to 11 U.S.C. § 190(h).

Third, the Debtor has not provided the Trustee with a copy of her 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).

Fourth, the Debtor has not provided the Trustee with copies of her 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).

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

14. [16-20269](#)-B-13 BENJAMIN BROWN  
MG-1 Matthew J. Gilbert

CONTINUED MOTION TO VALUE  
COLLATERAL OF TRAVIS CREDIT  
UNION  
2-1-16 [[12](#)]

**See Also #23**

RESOLVED BY STIPULATION ENTERED 3/22/16

**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)(ii) 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.

First, the Debtor has filed a fourth modified plan on February 25, 2016. The confirmation hearing is scheduled for April 5, 2016, at 1:00 p.m. The Debtor has taken measures to prosecute this case.

Second, the Debtor is no longer required to provide the Trustee with a Class 1 Checklist for Pennymac Loan Services, LLC, the holder of the first deed of trust on the Debtor's real property located at 5897 Bamford Drive, Sacramento, California, because the real property has been sold. The motion to sell free and clear of liens was filed with the court on February 25, 2016, Pennymac Loan Services, LLC filed a non-opposition to the motion, and the court entered an order granting the motion to sell on March 20, 2016.

Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

16. [15-29573](#)-B-13 SAUNDRA BATTAGLIA  
Steven A. Wolvek

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
2-16-16 [[29](#)]

**Final Ruling:** No appearance at the March 30, 2016, 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 \$77.00 due February 9, 2016. The court's docket reflects that the default was cured on February 17, 2016, and that the final installment was paid on February 25, 2016.

17. [15-28480](#)-B-13 ARTHUR/TRISHA WHITTEN MOTION TO DISMISS CASE  
JPJ-2 Peter G. Macaluso 2-24-16 [[27](#)]

**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)(ii) 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 Debtors have given the Trustee the required Domestic Support Obligation Checklist, which the Debtors stated in their response that they will provide on or before the date of the hearing of this matter.

18. [15-28583](#)-B-13 DRUE BROWN CONTINUED OBJECTION TO  
Thru #20 W. Steven Shumway CONFIRMATION OF PLAN BY BOSCO  
CREDIT, LLC  
12-10-15 [[21](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

19. [15-28583](#)-B-13 DRUE BROWN CONTINUED OBJECTION TO  
JPJ-1 W. Steven Shumway CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
12-23-15 [[26](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

20. [15-28583](#)-B-13 DRUE BROWN CONTINUED MOTION TO VALUE  
WSS-1 W. Steven Shumway COLLATERAL OF BOSCO CREDIT, LLC  
12-8-15 [[16](#)]

RESOLVED BY STIPULATION ENTERED 3/23/16



**Final Ruling:** No appearance at the March 30, 2016, 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)(ii) 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 continued meeting of creditors held on March 17, 2016. The meeting was continued to allow the Debtor the opportunity to file tax returns for 2013 and 2014 pursuant to 11 U.S.C. § 1308(a).

Second, 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 11 U.S.C. § 109(h).

Third, the Debtor has not provided the Trustee with a Class 1 Checklist and Authorization to Release Information pursuant to Local Bankr. R. 3015-1(b)(6). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, the Debtor has not provided the Trustee with copies of his 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 his 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).

Sixth, the Debtor must provide 42 days' notice of a hearing to confirm a plan and the deadline to conduct a confirmation hearing will expire on April 3, 2016. However, the Debtor has not filed, set for hearing, and served a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3) and 3015-1(d)(1). As a result, the court cannot timely conduct a confirmation hearing since the 45-day deadline set by 11 U.S.C. § 1324 will expire on April 3, 2016.

Seventh, the Debtor has not amended the Statement of Financial Affairs to list all income received in the years 2014, 2015, and 2016 to date and has not amended Schedule H to list the debts pertaining to co-debtor Guillermina F. Perez. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

22. [16-20194](#)-B-13 ALIDA/MANUEL DE JESUS  
JPJ-1 LOPEZ  
Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-18-16 [[13](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

This matter was continued from March 16, 2016. Nothing new has been filed. Therefore, the court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtors have not provided evidence of the value of real property as requested by the Chapter 13 Trustee at the meeting of creditors held on February 11, 2016. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 14, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

23. [16-20269](#)-B-13 BENJAMIN BROWN  
JPJ-1 Matthew J. Gilbert  
**See Also #14**

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY TRUSTEE  
JAN P. JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-24-16 [[17](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.