

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 24, 2018 at 1:00 p.m.

1.	<u>17-24701</u> -B-13 TONIA BRAEMER Nikki Farris	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 3-16-18 [<u>41</u>]
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Final Ruling: No appearance at the April 24, 2018, hearing is required.

The court's decision is to discharge the Order to Show Cause and no sanctions shall be imposed.

The Order to Show Cause was issued due to a document that was filed that required payment of \$25.00. Trustee Jan Johnson and, if represented, his counsel was ordered to appear before the court and show cause why the pleading should not be stricken, sanctions imposed on the filer and/or his counsel, or other appropriate relief ordered for such failure to comply with the provisions of 28 U.S.C. § 1930(b). The court's docket reflects that the default was cured on March 23, 2018.

The court will enter an appropriate minute order.

April 24, 2018 at 1:00 p.m.

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2. [17-27301](#)-B-13 GERARDO GARCIA AND ORDER TO SHOW CAUSE - FAILURE
 CLEMENTINA ARIAS TO PAY FEES
 Thomas O. Gillis 3-7-18 [[43](#)]

Final Ruling: No appearance at the April 24, 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 Debtors' failure to pay \$77.00 due March 2, 2018. The court's docket reflects that the default was cured on April 7, 2018. The payment constituted the final installment.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the April 24, 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 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, 11 U.S.C. § 1308(a) requires a Chapter 13 debtor to file all required tax returns for the four-year period prior to the filing of the petition and that the returns must be filed no later than the day before the date on which the meeting of creditors is first scheduled to be held. The meeting of creditors was held on March 8, 2018, and the Debtor testified at that hearing that she has not filed all income tax returns for the four-year period to the filing of the petition, specifically the tax year 2016. It is impossible for the Debtor to comply with 11 U.S.C. § 1308. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(e).

Third, 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).

Fourth, the Debtor has not amended her petition to add a prior Chapter 7 proceeding, case no. 12-28580, as required by the Trustee at the first meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3) since the Debtor has failed to cooperate with the Trustee. 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.

4. [16-21328](#)-B-13 GABRIEL GOMEZ AND MOTION TO DISMISS CASE
[JPJ](#)-4 ANGELICA CERVANTES 4-4-18 [[83](#)]
David Foyil

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 not dismiss the case.

Chapter 13 Trustee moves to dismiss the case on grounds that the confirmed plan understates the total amount of unsecured nonpriority claims in Section 2.15 at \$23,055.00. The total amount of timely filed and allowed unsecured nonpriority claims is \$73,769.85. The Trustee calculates that the confirmed plan will take a total of 114 months to complete, which result in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 78 months longer than the proposed duration of 36 months.

Debtors respond by stating that they have filed a modified plan concurrently with their response. The confirmation hearing on the modified plan is set for June 5, 2018.

Because the Debtors have filed a modified plan, the Debtors have not caused unreasonable delay that is prejudicial to creditors. Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

The court will enter an appropriate minute order.

5. [13-32857](#)-B-13 PAUL/VALERIE WILLOVER MOTION TO DISMISS CASE
[JPJ](#)-1 Eric John Schwab 4-4-18 [[25](#)]

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.

Chapter 13 Trustee moves to dismiss the case on grounds that the confirmed plan will take a total of 69 months to complete, which results in a commitment period that exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4) and which is 9 months longer than the proposed duration of 60 months.

Because the Debtors have not filed objections to claims nor timely file a modified plan, the Debtors have caused unreasonable delay that is prejudicial to creditors. Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

6. [12-41058](#)-B-13 LAUREEN RUSS
Michele Garfinkle

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-22-18 [[94](#)]

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 strike the assignment/transfer of claim from Specialized Loan Servicing LLC to ARCPE1, LLC at Dkt. 89.

The Order to Show Cause was issued due to a document that was filed that required payment of \$25.00. ARCPE 1, LLC and, if represented, its counsel was ordered to appear before the court and show cause why the pleading should not be stricken, sanctions imposed on the filer and/or its counsel, or other appropriate relief ordered for such failure to comply with the provisions of 28 U.S.C. § 1930(b). The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

Tentative Ruling: The Motion for Order Confirming Debtor's First Modified Chapter 13 Plan was originally set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 April 10, 2018, for the court to further review the matter. While both the Trustee and Debtor agree that the plan payments in the amount of \$3,050.00 (for months 10-20) and \$4,660.00 (for months 21-60) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims, they disagree as to the correct amount.

The Trustee asserts that the aggregate of the monthly amounts plus the Trustee's fee is \$3,126.00 for months 10-20, and \$4,817.00 for months 21-60. On the other hand, the Debtor asserts that the aggregate of the monthly amounts plus the Trustee's fee is \$3,084.00 for months 10-20, and \$4,756.00 for months 21-60. The difference in calculation is due to the fact that Trustee includes what its speculated future Trustee's fee will be.

As to the objections raised by the Trustee with regard to properly accounting all plan payments made to date to the Trustee and correcting the amount of post-petition mortgage arrears through February 20, 2018, the Debtor has agreed to make these corrections in the order confirming.

8. [17-27891](#)-B-13 JOHN REAL
[JPJ](#)-3 Gary Ray Fraley

MOTION TO DISMISS CASE
3-19-18 [[33](#)]

Final Ruling: No appearance at the April 24, 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.

Chapter 13 Trustee moves to dismiss the case on grounds that the 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 February 13, 2018. To date 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.

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.

Chapter 13 Trustee moves to dismiss the case on grounds that the 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 amended plan was heard and denied on February 20, 2018. To date 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.