

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: April 30, 2019

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
Sacramento, California

April 30, 2019 at 1:00 p.m.

-
1. [17-25902](#)-B-13 DEBORAH CANDATE MOTION TO DISMISS CASE
[JPJ](#)-2 Mary Ellen Terranella 3-29-19 [[34](#)]

No Ruling

2. [18-26405](#)-B-13 PHILLIP LLEWELLYN
[JPJ](#)-1 David Foyil

MOTION TO DISMISS CASE
3-12-19 [[44](#)]

No Ruling

3. [18-27206](#)-B-13 ARLENE DILLARD
Richard L. Jare

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-20-19 [[22](#)]

Final Ruling

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 \$40.00 due March 15, 2019. The court's docket reflects that the default was cured on April 1, 2019. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

4. [15-21411](#)-B-13 MARK GLOWSKI
[JPJ](#)-2 Peter G. Macaluso

MOTION TO DISMISS CASE
3-15-19 [[41](#)]

No Ruling

5. [14-31023](#)-B-13 JEANITA HARRIS
[JPJ](#)-2 Elliot Gale

CONTINUED MOTION TO DISMISS
CASE
2-15-19 [[27](#)]

No Ruling

6. [19-20124](#)-B-13 CHERYL HANSEN
[JPJ](#)-2 Scott D. Shumaker

MOTION TO DISMISS CASE
4-3-19 [[47](#)]

DEBTOR DISMISSED: 04/11/2019

Final Ruling

The case was dismissed on April 11, 2019. The motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. [19-20126](#)-B-13 BRENDA KIRN MOTION TO CONFIRM PLAN
[MJD](#)-5 Matthew J. DeCaminada 3-19-19 [[58](#)]

No Ruling

8. [18-26528](#)-B-13 KRISHNAPRASAD NALAJALA MOTION TO DISMISS CASE
[JPJ](#)-2 Brian L. Coggins 3-26-19 [[48](#)]

No Ruling

9. [18-27737](#)-B-13 APRIL/THOMAS AYATCH
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-18-19 [[30](#)]

Final Ruling

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 13, 2019. The court's docket reflects that the default was cured on April 18, 2019. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

10. [18-27638](#)-B-13 TANYA NORFLES
[JPJ](#)-1 George T. Burke

MOTION TO DISMISS CASE
3-26-19 [[46](#)]

No Ruling

11. [19-20443](#)-B-13 BARRY/MARIE CLEVERDON MOTION TO DISMISS CASE
[JPJ](#)-2 Scott D. Hughes 4-2-19 [[25](#)]

No Ruling

12. [18-26349](#)-B-13 MIREYA ORTIZ
[JPJ](#)-2 Michele M. Poteracke

MOTION TO DISMISS CASE
3-26-19 [[60](#)]

No Ruling

13. [19-20949](#)-B-13 ANNA RATH
[JPJ](#)-1 Pro Se

MOTION TO DISMISS CASE
3-29-19 [[21](#)]

No Ruling

14. [19-20650](#)-B-13 DAVID/SUSAN BAER
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-11-19 [[19](#)]

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 Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$79.00 installment when due on March 6, 2019. While the delinquent installment was paid on March 25, 2019, 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 order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED 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 a minute order.

15. [18-26852](#)-B-13 JIMMY SANTOS AND JULIE MOTION TO DISMISS CASE
[JPJ](#)-2 MAGHONEY SANTOS 3-1-19 [[57](#)]
Peter L. Cianchetta

No Ruling

16. [19-20957](#)-B-13 BRIAN HAMILTON
[JPJ](#)-1 Pro Se

MOTION TO DISMISS CASE
4-12-19 [[16](#)]

No Ruling

17. [19-20861](#)-B-13 RAJESH KAPOOR
Thru #19 Pro Se

ORDER TO SHOW CAUSE
4-2-19 [[36](#)]

No Ruling

18. [19-20861](#)-B-13 RAJESH KAPOOR
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-20-19 [[24](#)]

No Ruling

19. [19-20861](#)-B-13 RAJESH KAPOOR
[JPJ](#)-1 Pro Se

MOTION TO DISMISS CASE
3-29-19 [[31](#)]

No Ruling

20. [18-26564](#)-B-13 DESMAL MATTHEWS
[JPJ](#)-4 Jeremy Fancher

MOTION TO DISMISS CASE
3-1-19 [[88](#)]

No Ruling

21. [19-21866](#)-B-13 JUAN ALANIS
[JPJ](#)-1 Pro Se

MOTION TO DISMISS CASE
3-29-19 [[23](#)]

DEBTOR DISMISSED: 04/01/2019

Final Ruling

The case was dismissed on April 1, 2019. The motion is dismissed as moot.

The motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. [14-22868](#)-B-13 JANITRESS NATHANIEL MOTION TO DISMISS CASE
[JPJ](#)-3 Mary Ellen Terranella 4-1-19 [[64](#)]

No Ruling

23. [19-20768](#)-B-13 RONN/MELINDA BADILLA
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-18-19 [[19](#)]

Final Ruling

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 \$79.00 due March 13, 2019. The court's docket reflects that the default was cured on March 21, 2019. The payment constituted the final installment.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

The court will enter a minute order.

24. [19-20077](#)-B-13 JOHN JAMES
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-14-19 [[24](#)]

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 \$76.00 installment when due on March 11, 2019. While installments were paid on March 20, 2019, and April 15, 2019, 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 the last installment is not received by its due date, the case will be dismissed without further notice or hearing.

The order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED that if the last installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will enter a minute order.

25. [19-20578](#)-B-13 AARON MCCONVILLE
Thru #26 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-7-19 [[17](#)]

Tentative Ruling

The Order to Show Cause is dismissed as moot in light of the sustained Order to Show Cause at Item #26.

The order to show cause is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26. [19-20578](#)-B-13 AARON MCCONVILLE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-8-19 [[26](#)]

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 \$56.00 due April 1, 2019. This is the second Order to Show Cause issued to Debtor. See dkt. 17. 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 ruling appended to the minutes and the case is DISMISSED.

The court will enter a minute order.

27. [19-20680](#)-B-13 JESSICA KELLER
Lucas B. Garcia

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-12-19 [[22](#)]

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 7, 2019. While the delinquent installment was paid on April 2, 2019, 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 order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED 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 a minute order.

28. [19-20882](#)-B-13 HENRY RODRIGUEZ
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-21-19 [[27](#)]

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 18, 2019. While the delinquent installment was paid on April 8, 2019, 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 order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED 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 a minute order.

29. [19-20683](#)-B-13 SHARON BOLLING
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
3-13-19 [[21](#)]

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 8, 2019. While the delinquent installment was paid on April 9, 2019, 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 order to show cause is ORDERED DISCHARGED for reasons stated in the ruling appended to the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED 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 a minute order.

30. [19-21592](#)-B-13 VIRGIL EVANS
[JPJ](#)-1 Pro Se
Thru #31

MOTION TO DISMISS CASE
3-27-19 [[15](#)]

Final Ruling

As an accommodation to the pro se debtor who is facing dismissal with prejudice, see dkt. 33, this matter will be specially set and continued to 9:00 a.m. on Tuesday, May 7, 2019, to be heard following the reaffirmation calendar. Any party may appear telephonically.

The court will enter a minute order.

31. [19-21592](#)-B-13 VIRGIL EVANS
[JPJ](#)-2 Pro Se

OPPOSITION TO COURT'S NOTICE OF
INTENT TO DISMISS CASE
3-28-19 [[20](#)]

Final Ruling

To be specially set and continued to 9:00 a.m. on Tuesday, May 7, 2019, to be heard in conjunction with the trustee's motion to dismiss with prejudice at Item #30. Any party may appear telephonically.

The court will enter a minute order.

32. [18-21496](#)-B-13 DANILO SESE
[JPJ](#)-4 Peter G. Macaluso

MOTION TO DISMISS CASE
3-27-19 [[109](#)]

No Ruling

33. [17-26199](#)-B-13 HOWARD/CLARALYN SANT
[JPJ](#)-4 Peter L. Cianchetta

MOTION TO DISMISS CASE
3-26-19 [[83](#)]

No Ruling

34. [15-28904](#)-B-7 TREVOR WALLACE
 Scott J. Sagaria

MOTION TO SUBSTITUTE ATTORNEY
4-5-19 [[55](#)]

CASE CONVERTED: 03/26/2019

No Ruling

35. [14-31107](#)-B-13 SHERRY SKYRUD MOTION TO SUBSTITUTE ATTORNEY
Thru #56 Scott J. Sagaria 4-5-19 [[27](#)]
No Ruling
36. [15-26913](#)-B-13 GAIL NESBIT MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[21](#)]
No Ruling
37. [14-22818](#)-B-13 JOSEPH/DARLENE ROWLEY MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[60](#)]
No Ruling
38. [14-29019](#)-B-13 KRISTINA SAAR MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[61](#)]
No Ruling
39. [18-25527](#)-B-13 MARCIA SCHILLER MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[38](#)]
No Ruling
40. [13-35340](#)-B-13 RICHARD/LYNN MCBRIDE MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[54](#)]
No Ruling
41. [16-22042](#)-B-13 GARY BITTERS MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-12-19 [[34](#)]
No Ruling
42. [16-27044](#)-B-13 ZULEMA MANGAN MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[62](#)]
No Ruling

43. [17-24944](#)-B-13 MAURICE TALTON MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-10-19 [[53](#)]

No Ruling

44. [17-27445](#)-B-13 BRIAN/WENDY NICKLE MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-16-19 [[59](#)]

No Ruling

45. [17-28246](#)-B-13 FUAAD/ABEER IBRAHIM MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[51](#)]

No Ruling

46. [14-22555](#)-B-13 MELANIO/ELLEN VALDELLON MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[111](#)]

No Ruling

47. [14-25257](#)-B-13 DARRELL/BARBARA NEAL MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[80](#)]

No Ruling

48. [15-20059](#)-B-13 ELIZABETH HERRERA MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[46](#)]

No Ruling

49. [15-24764](#)-B-13 SOPHIA CHAVEZ MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[48](#)]

No Ruling

50. [18-26867](#)-B-13 BAYARDO/LUCILLA VILCHEZ MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-11-19 [[30](#)]

No Ruling

51. [16-22786](#)-B-13 YADIRA GUERRERO MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[22](#)]

No Ruling

52. [15-28187](#)-B-13 KIMBERLY SINGER MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-15-19 [[21](#)]

No Ruling

53. [16-25488](#)-B-13 HARLAN/PEGGY HOYT MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-5-19 [[39](#)]

No Ruling

54. [14-31789](#)-B-13 TYE MEDINA AND FELICIA MOTION TO SUBSTITUTE ATTORNEY
REYES 4-5-19 [[53](#)]
Scott J. Sagaria

No Ruling

55. [16-25489](#)-B-13 MELANIE MORTON MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-10-19 [[41](#)]

No Ruling

56. [17-26191](#)-B-13 CATHERINE VAIL MOTION TO SUBSTITUTE ATTORNEY
Scott J. Sagaria 4-16-19 [[41](#)]

No Ruling

57. [17-27350](#)-B-13 RICCY/TESSIE LABITORIA ORDER TO SHOW CAUSE
[RRR](#)-1 Ronald Roundy 4-25-19 [[104](#)]
Thru #58
- No Ruling**
58. [17-27350](#)-B-13 RICCY/TESSIE LABITORIA CONTINUED MOTION TO MODIFY PLAN
[RRR](#)-1 Ronald Roundy 2-28-19 [[88](#)]
- No Ruling**

59. [19-21999](#)-B-13 CRAIG MACEY
[MJD](#)-1 Matthew J. DeCaminada

MOTION TO VACATE DISMISSAL OF
CASE O.S.T.
4-19-19 [[23](#)]

DEBTOR DISMISSED: 04/19/2019

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion to vacate dismissal.

Debtor Craig Macey ("Debtor") moves to vacate the order dismissing this Chapter 13 case. This Chapter 13 case was dismissed on April 19, 2019, for failure to timely file documents. The only document that was not timely filed was the Attorney's Disclosure Statement, which Debtor's counsel represents is normally filed with Schedules but, for some unknown reason, was inadvertently omitted in this case. The matter has been addressed internally by Debtor's counsel, appropriate steps have been taken to prevent future occurrences, and the appropriate disclosure statement has been filed. Debtor states that if the dismissal order is vacated he is prepared to begin making plan payments and his filed plan proposes to pay 100% to unsecured creditors.

Discussion

Federal Rule of Civil Procedure 60(b)(1), applicable by Federal Rule of Bankruptcy Procedure 9024, permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Relief for excusable neglect is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Danger of prejudice to creditors is minimal. Debtor moved quickly - the same day in fact - after this case was dismissed to set aside the dismissal order. Vacating dismissal will not delay these proceedings since the Debtor is prepared to begin making monthly plan payments and has filed a 100% payment plan. Dismissal also resulted from an oversight outside the control of counsel who followed normal internal procedures for timely filing documents and otherwise expected that all documents were timely filed. And there is no indication of any bad faith by the Debtor.

Therefore, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be granted, the dismissal order at dkt. 21 vacated, and this case ordered reinstated. Further, by vacating the dismissal order which caused the automatic stay of 11 U.S.C. § 362(a) to terminate, upon entry of the order vacating the dismissal order the automatic stay of § 362(a) is revived for all purposes and as to all parties in interest. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes and the case SHALL BE REINSTATED.

The court will prepare a minute order.