

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

**May 11, 2015 at 2:00 p.m.**

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1. 14-31800-A-13 DONNA PALMER MOTION TO  
JPJ-1 DISMISS CASE  
4-27-15 [38]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be conditionally denied.

The debtor failed to propose a modified plan after confirmation of the debtor's initial plan was denied in February. The failure to promptly propose and confirm a modified plan is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(3) & (c)(4). However, after the trustee moved to dismiss the case, the debtor proposed a modified plan. It will be considered by the court on June 9.

If the debtor is unable to confirm a plan on June 9, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. The case will be dismissed on the trustee's ex parte application.

2. 12-39409-A-13 RICHEY HARRISON MOTION TO  
JPJ-5 DISMISS CASE  
4-22-15 [130]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$3,000 as required by the proposed plan. This default follows the proposal and confirmation of two modified plans since November 2014. The debtor immediately defaulted under the terms of both plans. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

3. 14-24219-A-13 DAVID/KAREN WARN MOTION TO  
JPJ-2 DISMISS CASE  
4-20-15 [69]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Amended Tentative Ruling:** The motion will be granted and the case will be

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dismissed.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce post filing tax records. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

4. 10-52724-A-13 HUGO/MARTHA GUZMAN MOTION TO  
JPJ-1 DISMISS CASE  
4-27-15 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

First, the debtor has failed to pay to the trustee approximately \$1,265 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the trustee's Notice of Filed Claims was filed and served on November 21, 2011. That notice advised the debtor that creditors had filed unsecured claims approximately \$72,000 more than is assumed by the plan. As a result, it will take 179 months to pay unsecured creditors the dividend required by the confirmed plan. This exceeds the maximum 60 month plan duration permitted by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with these claims, either by filing and serving a motion to modify the plan to provide for them claim within 60 months, or by objecting to claims in order to reduce the gross dividends payable such that the original plan could be completed within 60 months. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

This time period has expired and the debtor has failed to either object to the claims or modify the plan such that it can be completed within 60 months. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

5. 13-32124-A-13 SUE BEETS-ATKINSON AND MOTION TO  
JPJ-1 SHANNON ATKINSON DISMISS CASE  
4-27-15 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Amended Tentative Ruling:** The motion will be granted and the case will be dismissed.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce financial records for the debtor's closely held business. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

6. 14-29224-A-13 RUBEN/MARIA CARDENAS MOTION TO  
JPJ-1 DISMISS CASE  
4-22-15 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Amended Tentative Ruling:** The motion will be granted and the case will be dismissed.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce post filing tax records. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

7. 10-36328-A-13 DONNIE HALEY MOTION TO  
JPJ-2 DISMISS CASE  
4-14-15 [40]

**Final Ruling:** The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be conditionally denied.

The trustee's Notice of Filed Claims was filed and served on May 12, 2011. That notice advised the debtor that the IRS had filed a priority claim that was approximately \$6,000 greater than can be paid through the confirmed plan. The failure to provide payment in full of this claim violates 11 U.S.C. § 1322(a)(2).

The debtor failed to reconcile the plan with this claim, either by filing and serving a motion to modify the plan to provide for the claim, or by objecting to the claim. This is required Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The failure to propose and confirm a modified plan is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(3) & (c)(4). However, after the trustee moved to dismiss the case, the debtor proposed a modified plan. It will be considered by the court on June 9.

If the debtor is unable to confirm a plan on June 9, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. The case will be dismissed on the trustee's ex parte application.

8. 13-27629-A-13 LORI BISHOP MOTION TO  
JPJ-2 DISMISS CASE  
4-27-15 [36]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Amended Tentative Ruling:** The motion will be granted and the case will be dismissed.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce post filing tax records. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

9. 14-20453-A-13 ANTONIO TORRES AND MOTION TO  
JPJ-3 VIRGINIA NORIEGA DISMISS CASE  
4-20-15 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the case will remain pending.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce post filing tax records. However, after the motion was filed, the requested documents were sent by the debtor to the trustee.

10. 14-31979-A-13 AMANDA DENTON MOTION TO  
JPJ-1 DISMISS CASE  
4-27-15 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the case will be dismissed.

The debtor has failed to pay to the trustee approximately \$2,219 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

11. 13-22484-A-13 DAVID/STACEY JOHNSTON MOTION TO  
JPJ-2 DISMISS CASE  
4-20-15 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Amended Tentative Ruling:** The motion will be granted and the case will be dismissed.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce post filing tax records. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).