

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 21, 2018 at 2:00 p.m.

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| 1. 18-20117-A-13 CARSON BATES JPJ-1 | MOTION TO DISMISS CASE 4-26-18 [35] |
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Tentative Ruling: The motion will conditionally denied.

The plan initially proposed by the debtor was denied confirmation on March 12, 2018. The debtor thereafter failed to propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this motion was filed, the debtor filed a modified plan with a motion to confirm it. The motion will be considered by the court on June 18, 2018 at 1:30 PM. Therefore, on condition that the court grants the debtor's motion, the case shall remain pending. If a modified plan is not approved, the case may be dismissed on the trustee's ex parte application.

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| 2. 18-20350-A-13 JEFFREY/DENISE FIELDS JPJ-2 | MOTION TO DISMISS CASE 4-17-18 [23] |
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Final Ruling: This motion to dismiss the case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case dismissed.

First, the debtor has failed to pay to the trustee approximately \$2,497 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 debtor did not file all income tax returns for all applicable tax periods during the 4-year period ending on the date of the filing of the petition. Specifically, the debtor failed to file federal income tax returns for years 2014 through 2017.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor had not filed pre-petition tax returns, the trustee might object to the plan on the ground of a lack of feasibility or because the plan had not been proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was concluded on April 12. And, while it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee must hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The meeting is no longer open. Hence, the deadline for filing the delinquent returns has expired and it is now impossible for the debtor to comply with section 1308.

The failure to file these tax returns is cause for dismissal. See 11 U.S.C. § 1307(e).

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| 3. | 14-22498-A-13 STACEY BURGESS JPJ-1 | MOTION TO DISMISS CASE 4-11-18 [26] |
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Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on May 9.