

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**June 22, 2015 at 2:00 p.m.**

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1. 13-28417-A-13 PAUL/SARAH HAMM MOTION TO  
JPJ-6 DISMISS CASE  
6-4-15 [65]

- ☐ 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 \$525 as required by the 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, in breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce financial records relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).

2. 15-21424-A-13 ROBERT/LEE-ANN MAHAN MOTION TO  
JPJ-2 DISMISS CASE  
5-27-15 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied.

The debtor failed to propose a modified plan after confirmation of the debtor's initial plan was denied on April 20. 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).

If the debtor is unable to confirm a plan within 60 days of June 15, 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.

3. 15-23256-A-13 KEVIN EGAN MOTION TO  
JPJ-2 DISMISS CASE  
6-2-15 [18]

**Final Ruling:** The motion will be dismissed as moot. The case was dismissed on June 10.

4. 14-32458-A-13 MARVIN/LINDA GIEBER MOTION TO  
JPJ-1 DISMISS CASE  
6-8-15 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**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 relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1), (c) (6).

5. 13-23273-A-13 RICHARD SCHOFIELD MOTION TO  
JPJ-1 DISMISS CASE  
6-4-15 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**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 relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1), (c) (6).

6. 13-22074-A-13 DAVID/CATHERINE CHERRY MOTION TO  
JPJ-1 DISMISS CASE  
5-15-15 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on October 15, 2013. That notice advised the debtor that the IRS had filed a priority claim in excess of \$53,000, more than \$46,000 than is assumed by the confirmed plan. As a result, it will take 73 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) as well as the 37 month duration specified in the confirmed plan.

The debtor failed to reconcile the plan with this claims, either by filing and serving a motion to modify the plan to provide for the 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 37 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 tax claim 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).

7. 13-27681-A-13 RODNEY/MICHELLE HYLTON MOTION TO  
JPJ-4 DISMISS CASE  
6-4-15 [73]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**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 relating to the debtor's post petition taxes and wages/income. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1), (c)(6).