

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 26, 2018 at 1:00 p.m.

- [illegible]

DEBTOR DISMISSED: 05/30/2018

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

2. [18-22209](#)-B-13 EDWARD ANE-STRUB AND
[JPJ](#)-1 SANDRA ANE
W. Scott de Bie

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
5-24-18 [[14](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

First, the Debtor did not appear at the meeting of creditors set for May 17, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to June 21, 2018, and the meeting was concluded as to Debtor and Joint Debtor.

Second, according to the Trustee, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$890.34 and the Debtor must pay no less than \$53,420.04 to unsecured non-priority creditors. The plan pays only \$13,253.00 to unsecured non-priority creditors. However, Debtors filed a response stating that Debtor became completely disabled during March 2018 and remains disabled. The Debtors' petition filed April 12, 2018, included several earlier months of employment income that do not reflect the significant change in circumstances. Debtors assert that the budget proposed accurately reflects Debtors' best efforts and actual disposable income given Debtor's current disability income.

The plan filed April 12, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

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 Debtor, 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.

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, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$103.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional payment in the amount of \$103.00 will be due. The Debtor has not made plan payments since this petition was filed on April 25, 2018. Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Third, the Debtor did not appear at the meeting of creditors set for May 31, 2018, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fourth, the Debtor has failed to file, set for hearing, and serve a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3) and 3015-1(d)(1). Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Fifth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6). 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. [18-22112](#)-B-13 THOMAS ALGER
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-14-18 [[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 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 May 9, 2018. While the delinquent installment was paid on June 7, 2018, 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 court will enter an appropriate minute order.

Tentative Ruling: This is the continued hearing on a motion by Transport Funding, LLC ("Transport") to hold Debtor Gerardo Lopez ("Debtor") in contempt, dkt. 100, for failure to comply with the court's February 13, 2018, order entered on February 15, 2018. Dkts. 76, 80.

At the initial hearing held on June 12, 2018, the court found the Debtor in contempt of the February 13, 2018, order on two grounds: (i) procedurally, for failure to timely comply with the order; and (ii) substantively, for failure to provide Transport with the 2008 Volvo Tractor ("Tractor"), which is the subject of the February 13, 2018, order, or a verifiable location of the Tractor or the cousin who was given the Tractor by the Debtor and apparently has possession of it.

For that contempt, the Debtor was ordered to pay Transport \$100.00 a day for every day after June 12, 2018, i.e., beginning June 13, 2018, that the Debtor failed to provide Transport with a verifiable location of the Tractor. The court also permitted Transport to file a motion for attorney's fees and expenses within 30 days after the June 26, 2018, continued hearing on Transport's contempt motion. See dkt. 112.

Additionally, Transport was instructed to file a declaration after it received a verifiable location of the Tractor from the Debtor. See dkt. 112. Transport filed a declaration on June 22, 2018. Dkt 116. However, the location of the Tractor that Transport's attorney received from the Debtor's attorney was not verifiable. Transport's attorney was given a telephone number of an individual who purportedly has possession of the Tractor and/or where the Tractor is located; however, that individual did not speak English and so neither possession nor location of the Tractor could be verified. **Consequently, the Debtor remains non-compliant with the February 13, 2018, order and the daily \$100.00 sanction ordered on June 12, 2018, continues to accrue from and after June 13, 2018.** The Debtor will be given an opportunity on June 26, 2018, to provide a verifiable location of the Tractor and thereby terminate the daily sanction.

The Debtor was also warned at the June 12, 2018, hearing that he faced detention in the Sacramento County Jail if he failed or refused to comply with the February 13, 2018, order. And while that remains a real possibility in the Debtor's future, the court will provide the Debtor with one more opportunity to avoid detention.

The Debtor created the present problem when he fraudulently obtained financing for the Tractor from Transport and thereafter gave the Tractor to his cousin. So now, the Debtor will be responsible for fixing the problem he created.

Since the Debtor claims that the Tractor is in the possession of his cousin's wife, the Debtor is **ORDERED** to obtain the Tractor from his cousin and/or his cousin's wife and surrender it to Transport, or Transport's agent(s) or representative(s), by 5:00 p.m. on July 9, 2018. If the Debtor fails to surrender the Tractor, or fails to cause the Tractor to be surrendered, to Transport or its agent(s) or representative(s) by 5:00 p.m. on July 9, 2018, the Debtor will be permitted to show cause why he should not be detained in the Sacramento County Jail pending surrender of Transport's collateral which the Debtor has caused to be hidden.

The hearing on the Transport's motion for contempt will be continued to July 10, 2018, at 1:00 p.m. and the Debtor is **ORDERED** to appear personally at that continued hearing. If the Debtor fails to appear in court on July 10, 2018, at 1:00 p.m. the court will request the assistance of the United States Marshals Service to locate and detain the Debtor pending further hearing.

The court will enter an appropriate minute order.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the matter to July 3, 2018, at 1:00 p.m. to be heard in conjunction with Debtor's motion to compel and provide Debtors 60 days to confirm a plan or else their case will be dismissed on the Trustee's ex parte application.

The Chapter 13 Trustee moves to dismiss this case on grounds that the Debtors have failed to timely file a modified plan, failed to timely file objections to proofs of claim, and failed to provide the Trustee with an agreement for a loan modification of the home loan owed to Citi Mortgage, Inc. (predecessor of BSI Financial, Inc.). The Debtors are currently in month 48 and will be in month 49 on the date this motion is heard, and the confirmed plan will take a total of 273 months to complete resulting in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Debtors respond stating that they will file a modified plan and that they have filed a motion to compel BSI Financial, Inc. to (1) file a Notice of Mortgage Payment Change and (2) provide the court and/or Chapter 13 Trustee with an accurate statement of the current amount of pre-petition arrears. Debtors assert that the pre-petition arrears total approximately \$15,000.00 and that once BSI Financial, Inc. files the necessary documents, it will become apparent that the Debtors' modified plan will be feasible and that Debtors will be able to pay off this creditor and other secured creditors in the next 12 months.

The matter will be continued to July 3, 2018, to be heard in conjunction with Debtors' motion to compel. The Debtors shall have 60 days to confirm a plan and if no case is confirmed within that time the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

7. [16-20118](#)-B-13 LESTHER GASTELUM AND ALMA MOTION TO DISMISS CASE
 [JPJ](#)-2 SAQUELARES 5-17-18 [[114](#)]
 Peter G. Macaluso
WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The Chapter 13 Trustee having withdrawn its motion to dismiss, the motion is dismissed as moot.

The court will enter an appropriate minute order.

Tentative Ruling: The Amended Motion to Confirm Plan was originally set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). 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 court's decision is to confirm the amended plan.

This matter was continued from June 5, 2018, to allow Debtor to submit any declaration regarding his requirement to carry worker's compensation. A proof of claim filed by the State Comp Ins Fund on February 23, 2018, claim no. 8-1, states that the Debtor is \$4,578.01 post-petition delinquent in his worker's compensation payments.

The Declaration of Carlos Smith states that he did carry workers compensation for his window cleaning/janitorial business at the commencement of this case because he was a party to service contracts that required such coverage. When his coverage came up for renewal in November 2017, he was no longer a party to any contract requiring coverage. Additionally, Mr. Smith did not have any employees and state law does not require him to maintain workers' compensation. Mr. Smith states that he was unaware that his coverage would automatically renew and was not aware of the opt out requirement. The coverage continued until terminated for non-payment, which resulted in the State Comp Ins Fund claim. Therefore, the Debtor is not required to maintain insurance pursuant to Local Bankr. R. 3015-1(b)(3).

As to the delinquency in plan payments, the Debtors have cured their delinquency.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

9. [17-23827](#)-B-13 HEATHER BUCHFIRER MOTION TO DISMISS CASE
[JPJ](#)-1 Mohammad M. Mekkaram 5-24-18 [[41](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The Chapter 13 Trustee having withdrawn its motion to dismiss, the motion is dismissed as moot.

The court will enter an appropriate minute order.

10. [15-28829](#)-B-13 WAGMA SAFI MOTION TO DISMISS CASE
[JPJ](#)-2 Mitchell Abadallah 5-17-18 [[161](#)]

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The court's decision is to continue the matter to July 31, 2018, at 1:00 p.m. to be heard in conjunction with the Debtor's motion to confirm third modified plan, which Debtor asserts will bring current the delinquent plan payments over the course of the plan period.

The court will enter an appropriate minute order.

11. [18-22029](#)-B-13 GARY VALDEZ
[JPJ](#)-1 Gabriel E. Liberman

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON
5-9-18 [[21](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

This matter was continued from June 5, 2018, to provide the Debtor additional time to submit proof of social security. A continued meeting of creditors was held on June 21, 2018, and concluded as to Debtor.

The plan filed April 4, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the June 26, 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 and her attorney did not appear at the meeting of creditors set for May 3, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

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 plan cannot be fully assessed for feasibility. Class 1 lists the arrearage dividend as "see additional provisions" but the Nonstandard Provision in the Chapter 13 Plan does not list an arrearage dividend for the Seterus claim. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the plan cannot be effectively administered because the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at \$0.00.

Sixth, the Debtor's attorney's fees are listed in the amount of \$7,690.00 in connection with plan confirmation. However, this is not a business case and the maximum fee that may be charged is \$4,000.00 in nonbusiness cases.

Seventh, information on the Debtor's petition is incorrect. Specifically, the filing date of a previous case needs to be corrected.

Eighth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1). The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

13. [18-22045](#)-B-13 ALLEAN BROWN
[JPJ](#)-2 Pro Se

MOTION TO DISMISS CASE
5-29-18 [[26](#)]

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The court's decision is to continue the matter to July 24, 2018, at 1:00 p.m. to be heard after the continued meeting of creditors set for July 19, 2018.

The court will enter an appropriate minute order.

Tentative Ruling: The Trustee's Motion to Dismiss Case has been set for hearing on the 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not dismiss the case.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor did not provide the Trustee with requested copies of certain documents: income tax return for the tax year 2017, W-2 wage and tax statement for the year 2017, copies of bank account statements for January through March 2018, copies of payment advices for January through March 2018, and information regarding any inheritances, life insurance benefits, lawsuits, potential claims against third parties, judgments in civil actions, lottery and other gambling winnings received since the filing of the petition pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan.

Debtor responds by stating that neither he nor his attorney received the Trustee's letter requesting the documents. The Debtor's counsel asserts that after receiving the motion to dismiss case, she emailed to the Trustee's office all requested documents the next business day.

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.

15. [17-20155](#)-B-13 RUMMY SANDHU MOTION TO DISMISS CASE
[JPJ](#)-2 Peter G. Macaluso 5-24-18 [[104](#)]

Final Ruling: No appearance at the June 26, 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.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has not provide the Trustee with requested copies of certain documents: income tax return for the tax year 2017, W-2 wage and tax statement for the year 2017, copies of bank account statements for January through March 2018, copies of payment advices for January through March 2018, and information regarding any inheritances, life insurance benefits, lawsuits, potential claims against third parties, judgments in civil actions, lottery and other gambling winnings received since the filing of the petition pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan. To date, the Debtor has not provided these documents to the Trustee. The Debtor has failed to cooperate with the Trustee as necessary to enable the Trustee to perform his duties as required pursuant to 11 U.S.C. § 521(a)(3).

Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (6). The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to set a continued hearing date at the hearing..

The Chapter 13 Trustee moves to convert this case because 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 was heard and sustained on March 6, 2018. To date, the Debtor has failed to take further action to confirm a plan. The Trustee further states that conversion, rather than dismissal, would be in the best interests of creditors and the estate pursuant to 11 U.S.C. § 1307(c) because Debtor has non-exempt property of approximately \$35,456.11 to \$146,206.11 after deducting a Chapter 7 trustee's fee.

Response by Debtor

Debtor requests a continuance on the Trustee's motion to convert stating that JP Morgan Chase has offered a loan modification as to real property located in Drain, Oregon. See dkt. 70, exh. B.

Separately, as to proof of claim number 5-1 filed by JP Morgan Chase Bank, National Association, which secures real property located in Lincoln, California, the creditor filed a notice stating that the claim has been satisfied. See Notice of Satisfaction of Claim filed April 30, 2018. A Deed of Full Reconveyance was recorded with Placer County Recorder on May 22, 2018. See dkt. 70, exh. A.

The Debtor has also received a wire transfer in the amount of \$121,822.50 for his cashed out 1/3 interest in real property located in Sacramento, California. See dkt. 70, exh. D.

Due to these developments, Debtor asserts he needs additional time to determine what needs to be paid to unsecured creditors and, the court infers, additional time to file a new plan and set it for a confirmation hearing. Debtor states that he contacted the Chapter 13 Trustee's office to request a continuance and that the Trustee did not oppose this request.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Due to Debtor's changed circumstances of having been offered a loan modification as to property located in Drain, Oregon, having been reconveyed property located Lincoln, California, and having been paid his 1/3 interest in property located in Sacramento, California, the court will grant the Debtor's request to continue this motion. The court will set a continued hearing date at the hearing.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the June 26, 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.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has not provide the Trustee with requested copies of certain documents: income tax return for the tax year 2017, W-2 wage and tax statement for the year 2017, copies of bank account statements for January through March 2018, copies of payment advices for January through March 2018, and information regarding any inheritances, life insurance benefits, lawsuits, potential claims against third parties, judgments in civil actions, lottery and other gambling winnings received since the filing of the petition pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan. To date, the Debtor has not provided these documents to the Trustee. The Debtor has failed to cooperate with the Trustee as necessary to enable the Trustee to perform his duties as required pursuant to 11 U.S.C. § 521(a)(3).

Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (6). 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 Debtor, 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.

The Chapter 13 Trustee moves to dismiss the case on grounds that the Debtor has not provided the Trustee with requested copies of certain documents: income tax return for the tax year 2017, W-2 wage and tax statement for the year 2017, copies of bank account statements for January through March 2018, copies of payment advices for January through March 2018, and information regarding any inheritances, life insurance benefits, lawsuits, potential claims against third parties, judgments in civil actions, lottery and other gambling winnings received since the filing of the petition pursuant to 11 U.S.C. § 521(f), Local Bankr. R. 3015-1(b)(5), and the duties imposed by Section 5.02 of the confirmed plan. To date, the Debtor has not provided these documents to the Trustee. The Debtor has failed to cooperate with the Trustee as necessary to enable the Trustee to perform his duties as required pursuant to 11 U.S.C. § 521(a)(3).

Cause exists to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (6). The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the June 26, 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 and his attorney did not appear at the meeting of creditors set for May 3, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,787.00, which represents approximately 1 plan payment. By the time this motion is heard, two additional plan payments in the amount of \$5,574.00 will also be due. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, the Debtor has failed to provide the Trustee with requested copies of certain items related to Debtor's rental property and/or operation of a business including, but not limited to, a completed business examination checklist, income tax returns for the two-year period prior to the filing of the petition, bank account statements for the six-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. It cannot be determined whether the business is solvent and necessary for reorganization.

Fourth, the plan cannot be effectively administered because the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at \$0.00.

Fifth, the Debtor has not served upon the Trustee a Class 1 Checklist for Specialized Loan Servicing, USAA Federal Savings Bank, Villa Knolls Homeowners Association, and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Sixth, the Debtor has failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to his rental property and/or operation of a business.

Seventh, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 109(h) because Debtor's certificate of completion from an approved nonprofit budget and credit counseling agency was not received during the 180-day period preceding the date of the filing of the petition.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

20. [18-21587](#)-B-13 JENNIFER MIZE
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-23-18 [[44](#)]

DEBTOR DISMISSED: 05/30/2018

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot with no sanctions ordered.

The court will enter an appropriate minute order.

21. [18-21994](#)-B-13 ALVIN CATLIN
[JPJ](#)-1 Lucas B. Garcia
Thru #22

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-24-18 [[41](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, feasibility depends on the granting of a motion to value collateral for Capital One Auto Finance. That motion was heard and denied on June 19, 2018, due to defective service.

Second, the plan payment in the amount of \$5,250.00 does 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. The aggregate of the monthly amounts plus the Trustee's fee is \$5,417.00. The plan does not comply with Section 5.2 of the mandatory form plan.

Third, the plan cannot be effectively administered. The Debtor scheduled a debt owing to Real Time Resolutions as a Class 4 creditor in his plan. Section 3.10 states, "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by debtor or a third person whether or not a proof of claim is filed or the plan is confirmed." Pursuant to claim no. 5-1 filed by this creditor on May 17, 2018, the loan was entered into on January 11, 2006, with a term of 180 months (15 years). The Debtor is proposing a 60-month plan with a final payment due April 25, 2023. Based on the proof of claim, the Debtor has mis-classified Real Time Resolution as Class 4. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed April 16, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

22. [18-21994](#)-B-13 ALVIN CATLIN
[LBG](#)-101 Lucas B. Garcia

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY 2005
RESIDENTIAL TRUST 3-1
5-24-18 [[36](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and not confirm the plan.

2005 Residential Trust 3-1 ("Creditor") objects to its classification in Class 4. Section 3.10 states, "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by debtor or a third person whether or not a proof of claim is filed or the plan is confirmed." Pursuant to claim no. 9-1 filed by this creditor on June 11, 2018, there are pre-petition arrearages. Additionally, it appears that Debtor's proposed monthly payments to Creditor are a modification. Due to these issues, Creditor's claim appears to be misclassified. Since the plan does not provide for the surrender of the collateral for this claim, the plan must properly provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages and does not provide for maintenance of the ongoing note installments, the plan cannot be confirmed.

The plan filed April 16, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

23. [14-22799](#)-B-7 DIANE CODY-WILLIAMS MOTION TO DISMISS CASE
[JPJ](#)-10 Peter G. Macaluso 5-17-18 [[51](#)]

CASE CONVERTED: 06/12/2018

Final Ruling: No appearance at the June 26, 2018, hearing is required.

The case having been converted to one under Chapter 7, the motion is dismissed as moot.

The court will enter an appropriate minute order.

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 extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on April 10, 2018, due to failure to confirm a plan within 75 days from the date of entry of an order denying confirmation (case no. 17-27489, dkt. 43). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtors assert that the previous case and current case were filed to avoid a levy for taxes. The Debtors are both employed and able to fund the plan. The previous case was dismissed not due to any scheme or abuse of the bankruptcy process by the Debtors, but rather because Debtors' counsel failed to file an amended plan and set a motion to confirm it within the 75-day requirement. According to the Declaration of Gary Fraley, Debtors' counsel had significant medical and staffing issues that caused the motion to confirm to not be timely filed and the case was dismissed on the Trustee's ex parte application.

The Debtors have sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court will enter an appropriate minute order.