

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 27, 2017 at 1:00 p.m.

1.	<u>17-23002</u> -B-13 JUDITH LUCAS Steele Lanphier	ORDER TO SHOW CAUSE - FAILURE TO PAY FEES 6-6-17 [<u>18</u>]
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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 \$79.00 due June 1, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

June 27, 2017 at 1:00 p.m.

2. [17-23022](#)-B-13 CHRISTOPHER FOWLER
Dale A. Orthner

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-7-17 [[28](#)]

Final Ruling: No appearance at the June 27, 2017, hearing is required.

The court's decision is to continue this matter for the reason stated below.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due June 2, 2017. The court's docket reflects that the default has not been cured. However, this matter is continued to July 25, 2017, at 1:00 p.m. to allow the Debtor to show cause why this case should not be dismissed pursuant to 11 U.S.C. § 109(g)1() for willful failure to abide by orders of the court or to appear before the court in proper prosecution of the case. The Debtor and any other party in interest may file a response to this order to show cause by July 11, 2017.

The court will enter an appropriate minute order.

3. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY MOTION TO DISMISS CASE
JPJ-5 LAU 5-17-17 [[222](#)]
Mikalah R. Liviakis

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)(ii) 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 dismiss the case.

Chapter 13 Trustee Jan Johnson moves to dismiss the case on grounds that the Debtors failed to turn over all income tax refunds and all net proceeds from bonuses as required by the stipulation entered into between the parties on January 28, 2016, and approved by the court on that same day. This constitutes an unreasonable delay that is prejudicial to creditors and a material default with respect to a term of a confirmed plan. The Trustee asserts that based on the Debtors' 2016 tax returns and payment advices for January through March 2017, the Debtors received a tax refund from the Internal Revenue Service of \$4,900.00, a tax refund from the Franchise Tax Board of \$5,405.00, a bonus described as "Active Co Bonus" of \$11,326.00, and a bonus described as "Indiv Perf Incent Award" of \$8,500.00. According to the Trustee, the Debtors must turn over a total of \$22,200.60 but have turned over only \$10,000.00.

The Debtors filed an opposition and declaration stating that they have not received any tax refund from the Franchise Tax Board but make no assertion that they did not receive any tax refund from the Internal Revenue Service. The Debtors also contend that Joint Debtor Wendy Lau was paid a bonus of \$10,111.38 but they do not provide any evidence in the form of exhibits to refute the bonus amounts asserted by the Trustee. See dkt. 225, exh. B. The only exhibits provided by the Debtors is an invoice for professional tax preparation and filing services. See dkt. 230.

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

4. [15-24828](#)-B-13 SALEEM/KULSOOM KHAN MOTION TO DISMISS CASE
JPJ-1 Mikalah R. Liviakis 5-31-17 [[23](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 27, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The court will enter an appropriate minute order.

5. [17-23028](#)-B-13 LESIA BANADA
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-7-17 [[19](#)]

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 \$79.00 due June 2, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the June 27, 2017, 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)(ii) 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 not dismiss the case.

Chapter 13 Trustee Jan Johnson moves to dismiss this case on grounds that 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 Debtor's motion to confirm second amended plan was heard and denied without prejudice on April 13, 2017, due to insufficient service of process on creditors Aarons Sales and Lease and Capital One Finance. Thereafter, Debtor filed a second and third amended motion to confirm second amended plan on May 24, 2017, and June 12, 2017, respectively. The third amended motion to confirm second amended plan is scheduled to be heard on July 3, 2017, at 1:00 p.m. Therefore, the Debtor has not failed to prosecute this case and the case will not be dismissed.

The court will enter an appropriate minute order.

7. [16-20557](#)-B-13 DELMAR/KAREN REYNOLDS MOTION TO DISMISS CASE
JPJ-3 Clark D. Nicholas 5-23-17 [[63](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 27, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The court will enter an appropriate minute order.

8. [16-28259](#)-B-13 PAULA BOYD MOTION TO DISMISS CASE
 JPJ-2 Richard L. Sturdevant 5-22-17 [[49](#)]

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)(ii) 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.

Chapter 13 Trustee Jan Johnson moves to dismiss this case on grounds that 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 of plan was heard and sustained on April 11, 2017. Since then, Debtor has filed an amended plan on June 13, 2017, and confirmation hearing is scheduled for August 1, 2017, at 1:00 p.m. Therefore, the Debtor has not failed to prosecute this case and the case will not be dismissed.

The court will enter an appropriate minute order.

9. [17-23060](#)-B-13 SERGEY YANOVSKIY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-8-17 [[26](#)]

DEBTOR DISMISSED: 06/09/2017

Final Ruling: No appearance at the June 27, 2017, 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.

Final Ruling: No appearance at the June 27, 2017, 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)(ii) 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.

Chapter 13 Trustee Jan Johnson moves to dismiss the case on grounds that the Debtor failed to appear at the first meeting of creditors set for May 4, 2017, the Debtor has failed to make any plan payments since the petition was filed on March 29, 2017, and the Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs.

The Debtor has filed a non-opposition to the Trustee's motion to dismiss.

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

The court will enter an appropriate minute order.

11. [11-48070](#)-B-13 DOUGLAS/TANA TOLSON
JPJ-4 Stephen M. Reynolds

MOTION TO DISMISS CASE
5-31-17 [[124](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 27, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

The court will enter an appropriate minute order.

12. [17-21370](#)-B-13 DAMON/LYDIA WARD
Michael Benavides

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-5-17 [[31](#)]

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 \$73.00 due May 31, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

13. [17-22670](#)-B-13 TROY FINLEY
Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-26-17 [[32](#)]

DEBTOR DISMISSED: 06/08/2017

Final Ruling: No appearance at the June 27, 2017, 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.

14. [17-22786](#)-B-13 IGNACIO RAMIREZ AND
THELMA MARIN
Thomas O. Gillis

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-1-17 [[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 May 30, 2017. While the delinquent installment was paid on June 9, 2017, 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.