

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 25, 2017 at 1:00 p.m.

1. [17-23313](#)-B-13 VIRGIL EVANS
JPJ-2

MOTION TO DISMISS CASE
7-6-17 [[45](#)]

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 is delinquent to the Chapter 13 Trustee in the amount of \$1,986.00, which represents approximately 1 plan payment. The Debtor has failed to make any plan payments to the Trustee since the filing of the petition on May 16, 2017. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Second, 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).

Third, 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).

Fourth, 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. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

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

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-17 [[49](#)]

Thru #3

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 for the reasons stated in Item #3.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due July 3, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

3. [17-23022](#)-B-13 CHRISTOPHER FOWLER

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

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.

On June 27, 2017, the court also provided the Debtor with notice of its intent to dismiss this case pursuant to 11 U.S.C. § 109(g)(1). Dkt. 39. The court also provided the Debtor with an opportunity to respond by July 11, 2017. The Debtor did not respond. Therefore, based on the Debtor's willful failure to abide by an order of the court as evidenced by Debtor's failure to comply with the order approving payment of the filing fee in installments, having made none of the required installment payments, and failure to further propose a plan, this case is ordered dismissed pursuant to 11 U.S.C. § 109(g)(1).

The court will enter an appropriate minute order.

4. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY CONTINUED MOTION TO DISMISS
JPJ-5 LAU CASE
5-17-17 [[222](#)]

Tentative Ruling: This matter was continued from June 27, 2017. The Trustee's Motion to Dismiss Case was originally 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 matter will be determined at the scheduled hearing.

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. The Debtors further stated at the hearing in open court that they did receive a tax refund from the Internal Revenue Service. The Debtors dispute the bonus amount received by Joint Debtor Wendy Lau but agree that any difference in amount must be turned over to the Trustee. The Debtors requested a continuance to determine the amount needed to be turned over to the Trustee.

5. [17-22426](#)-B-13 HERBERT BENNETT
JPJ-1

MOTION TO DISMISS CASE
7-10-17 [[19](#)]

Final Ruling: No appearance at the July 25, 2017, is necessary. The Debtor dismissed is case on July 20, 2017. The motion is dismissed as moot.

The court will enter an appropriate minute order.

6. [17-23028](#)-B-13 LESIA BANADA
JPJ-2

MOTION TO DISMISS CASE
6-22-17 [[31](#)]

DEBTOR DISMISSED: 06/28/2017

Final Ruling: No appearance at the July 25, 2017, is necessary. The Debtor dismissed her case on June 28, 2017. The motion is dismissed as moot.

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 did not appear at the meeting of creditors set for June 29, 2017, as required pursuant to 11 U.S.C. § 343. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1)

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$361.03, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$911.03 will be due. The Debtor has failed to make any plan payments to the Trustee since the filing of the petition on May 11, 2017. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

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 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).

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. The motion is granted and the case is dismissed.

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)(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.

First, the Debtor did not appear at the meeting of creditors set for June 15, 2017, as required pursuant to 11 U.S.C. § 343. Although a request was made one day prior to the meeting of creditors to continue the hearing, the Trustee informed Debtor's attorney's legal assistant that counsel or someone on Debtor's behalf would have to appear at the June 15, 2017, meeting of creditors and request a continuance. No one appeared to request a continuance.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$608.00, which represents approximately 1 plan payment. By the date of this hearing, an additional plan payment in the amount of \$608.00 will also be due. The Debtor has failed to make any plan payments to the Trustee since the filing of the petition on May 8, 2017. There is cause to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Third, feasibility of the plan depends on the granting of a motion to value collateral held by Santander Consumer USA. To date, the Debtor has not filed, set for hearing, and properly served on the respondent creditor and the Trustee a motion to value collateral. The Debtor has failed to prosecute this cause causing unreasonable delay that is prejudicial to creditors 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.

9. [17-23251](#)-B-13 STEPHAN/MARCIA ROTHSCHILD ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-26-17 [[13](#)]

Final Ruling: No appearance at the July 24, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtors' failure to pay the filing fee of \$310.00. The court's docket reflects that the default was cured on June 8, 2017.

The court will enter an appropriate minute order.

10. [17-23764](#)-B-13 BRENDA SMITH

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
7-7-17 [[20](#)]

Final Ruling: No appearance at the July 25, 2017, hearing is required.

The court's decision is to discharge the Order to Show Cause and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$79.00 due July 3, 2017. The court's docket reflects that the default was cured on July 17, 2017. The payment of \$310.00 served as the final installment.

The court will issue 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 Debtors, 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 not dismiss the case.

The Trustee moves to dismiss case on grounds that the Debtors failed to take further action to confirm a plan after the objection to confirmation filed by Bank of America, N.A. was heard and sustained on May 16, 2017. Trustee asserts that this is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(b)(1).

However, it appears that the Debtors filed an amended plan on July 9, 2017. The confirmation hearing is set for August 22, 2017.

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.

12. [17-23951](#)-B-13 MICHAEL/NAOMI ALFORD
RCO-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
6-30-17 [[29](#)]

Add #14

Tentative Ruling: This matter was continued from July 17, 2017. The Objection to Confirmation of Chapter 13 Plan was originally 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 matter will be determined at the scheduled hearing.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at **7801 Verna Mae Avenue, Sacramento, California** ("Property"). The creditor asserts \$0.00 in pre-petition arrearages and a principal balance of \$132,380.20. No proof of claim has been filed. Creditor asserts that the Debtors' plan does not provide any treatment for its claim, fails to provide for ongoing payments, and fails to surrender the Property. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

Debtors have filed a response stating they had filed for Chapter 7 relief in September 15, 2012, and in that proceeding had surrendered the property located at **7290 Jerry Way, Sacramento, California**. The Debtors state that they are not opposed to adding a provision to the order confirming to provide for the **7290 Jerry Way** property as a Class 3 claim. However, the Debtors make no mention of the property located on **7801 Verna Mae Avenue**.

13. [16-20581](#)-B-13 BRODIE STEPHENS
JPJ-3 Peter Macaluso

CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 7 AND/OR MOTION
TO DISMISS CASE
5-31-17 [[68](#)]

Tentative Ruling: This matter was continued from July 17, 2017. Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was originally 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).

The matter will be determined at the scheduled hearing.

This motion was filed by Chapter 13 Trustee Jan Johnson ("Trustee"). Trustee asserts that the case should be converted on grounds that the Debtor failed to surrender to the Trustee all tax refunds up to \$9,227.00 as stated in the order confirming plan filed May 11, 2016. Trustee asserts that the Debtor received a refund from the Internal Revenue Service in the amount of \$4,215.00 and a refund from the Franchise Tax Board in the amount of \$2,475.00 for the 2016 tax year.

According to amended Schedules A/B filed March 15, 2016, the total value of non-exempt property in the estate is approximately \$40,464.09. The Trustee asserts that conversion of this case rather than dismissal is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

Response by Debtor

Debtor's spouse (and curiously not the Debtor) asserts in a declaration that the Internal Revenue Service issued a tax refund in the amount of \$5,035.22 and that the Franchise Tax Board issued a tax refund of \$714.85. Apparently, the amount from the Franchise Tax Board is less than the anticipated amount because an offset was performed from what Debtor previously owed. Debtor states that they paid the total of \$5,750.07 to the Trustee on June 12, 2017.

At the July 17, 2017, hearing, Debtor was ordered to file and serve the Trustee with copies of the checks and refunds received by 5:00 p.m. on July 21, 2017.

A supplemental declaration was filed along with exhibits on July 21, 2017, showing that the IRS actually issued only one tax refund in the amount of \$3,275.07 and that the FTB issued two checks in the amounts of \$1,760.15 and \$714.85. Debtor's spouse states that she mistakenly mixed up which agency provided which payments and that she was not attempting to deceive the court or Trustee.

14. [17-23951](#)-B-13 MICHAEL/NAOMI ALFORD
RCO-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
6-30-17 [[23](#)]

See also #12

Tentative Ruling: This matter was continued from July 17, 2017. The Objection to Confirmation of Chapter 13 Plan was originally 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 matter will be determined at the scheduled hearing.

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by real property located at **7280 Jerry Way, Sacramento, California** ("Property"). The creditor asserts \$0.00 in pre-petition arrearages and a principal balance of \$139,209.96. No proof of claim has been filed. Creditor asserts that the Debtors' plan does not provide any treatment for its claim, fails to provide for ongoing payments, and fails to surrender the Property. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B).

Debtors have filed a response stating they had filed for Chapter 7 relief in September 15, 2012, and in that proceeding had surrendered the property located at **7290** Jerry Way, Sacramento, California. The Debtors state that they are not opposed to adding a provision to the order confirming to provide for the **7290** Jerry Way property as a Class 3 claim. However, the Debtors make no mention of the property located on **7280 Jerry Way**.

Tentative Ruling: The court issues no 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 motion will be determined at the scheduled hearing.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 3, 2017, for failure to make plan payments (case no. 16-42976, dkt. 58, 61). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 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 Debtor asserts that the previous case was filed in an effort to save her home. Debtor states that her circumstances have changed because she has hired new counsel who has advised her on the benefits and mechanics of obtaining a home loan modification. Debtor states that she had not previously filed an application for a loan modification because she knew little to nothing about how it works. Debtor believes that her circumstances have changed because she is now familiar with the loan modification process and is confident that she qualifies for a modification.