

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

August 15, 2016 at 2:00 p.m.

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| 1. | 12-26804-A-13    BRYAN MACMILLAN<br>JPJ-9 | MOTION TO<br>DISMISS CASE<br>7-1-16 [73] |
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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 the debtor 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted and the case dismissed.

The debtor has failed to pay to the trustee approximately \$3,139.71 as required by the plan. And, this is not the first payment default. The trustee issued six Notices of Default since confirmation of the plan because of the failure of the debtor to make regular plan payments. 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).

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| 2. | 12-31734-A-13    JAMES/SANDRA QUICK<br>JPJ-1 | MOTION TO<br>DISMISS CASE<br>7-12-16 [28] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on April 2, 2013 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 77 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-03 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).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6). Nonetheless, the court notes that the debtor belatedly filed a motion to confirm a modified plan that addresses the above issue. It is set for hearing on June 6. Therefore, if the proposed modified plan is not confirmed at the June 6 hearing, the case will be dismissed on the trustee's ex parte application.

3. 11-42472-A-13 YEKATERINA TAGINTSEVA MOTION TO  
JPJ-8 DISMISS CASE  
7-8-16 [41]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the case will remain pending.

The debtor has failed to pay to the trustee approximately \$854 as required by the proposed plan. However, after the motion was filed, the default was cured. No cause remains for dismissal.

4. 12-20773-A-13 LADANIEL/GRETCHEN KEY MOTION TO  
JPJ-7 DISMISS CASE  
7-8-16 [135]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the case will remain pending.

The debtor has failed to pay to the trustee approximately \$1,120 as required by the proposed plan. However, after the motion was filed, the default was cured. No cause remains for dismissal.

5. 13-26685-A-13 KATHLEEN STEFFENS MOTION TO  
JPJ-3 DISMISS CASE  
7-15-16 [76]

**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 the debtor 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor 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 \$350 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 failed to cooperate timely 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).