

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: October 26, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 26, 2021 at 1:00 p.m.

1. [21-20437](#)-B-13 ANGELA WARE-PERKINS MOTION TO DISMISS CASE
[RDG-2](#) Hank W. Walth 10-7-21 [[65](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to dismiss case.

The Chapter 13 Trustee filed a motion to dismiss case on August 12, 2021. The motion was conditionally granted and the hearing was continued to September 7, 2021, for any opposition to be filed. The Debtor filed a response on September 2, 2021, stating among other things, that she would file an amended plan and set a confirmation hearing. As a result, the court entered an order on September 9, 2021, denying the Trustee's motion to dismiss case.

The Debtor has since failed to file, set, and serve an amended plan and motion to confirm. The Debtor has not made a plan payment since June 3, 2021, increasing her prior delinquency to \$10,882.00. Another payment was due on October 25, 2021.

The court is aware that the current motion to dismiss was filed, set, and served under Local Bankr. R. 9014-1(f)(2). The court also notes that the Debtor was provided a prior opportunity to avoid dismissal by correcting the deficiency which establishes the cause on which the current motion to dismiss is based. In other words, the court denied the Trustee's prior motion to dismiss and the Debtor avoided dismissal based on her representation that she would file, set, and serve an amended plan and motion to confirm it which she has failed to do causing the necessity of a second motion to dismiss based on the same grounds as the first. Further briefing is therefore not necessary for purposes of the current motion. The Debtor's failure to comply with her representation and cure her defaults, and the prejudice to creditors that failure exacerbates, are sufficient cause for dismissal which, rather than conversion, is in the best interest of creditors who may pursue their claims outside of bankruptcy. *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (B.A.P. 9th Cir. 2011) ("A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1).")

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

The court will issue an order.

October 26, 2021 at 1:00 p.m.

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Final Ruling

The motion has been set for hearing on less than 14-days notice. Local Bankruptcy Rule 9014-1(f)(3). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the amended motion to dismiss case and continue the matter to November 2, 2021, at 1:00 p.m.**

As of October 12, 2021, plan payments under the plan are delinquent in the sum of \$417,465.25. The last payment was received on September 22, 2021. This delinquency stems from the plan confirmed on March 10, 2020, that calls for a lump sum payment in month 24 (June 2021) of \$413,000.00 or an amount necessary to pay the plan in full at 100% plus interest at the federal judgement rate of 2.05%. The amount needed to complete this plan is \$417,465.25. Debtor's failure to perform under the plan is prejudicial to creditors since they are delayed in receiving payments. 11 U.S.C. § 1307(c)(1) and (6).

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

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(3), any party in interest shall have until 5:00 p.m. on Friday, October 29, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(3). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 2, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on November 2, 2021, at 1:00 p.m.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the motion to dismiss case and continue the matter to November 2, 2021, at 1:00 p.m.**

First, as of October 12, 2021, plan payments under the plan are delinquent in the sum of \$54.00. The last payment having been received on August 31, 2021. Debtor's failure to perform under the plan is prejudicial to creditors since they are delayed in receiving payments. 11 U.S.C. § 1307(c)(1) and (6).

Second, Debtor's confirmed plan is for a term of 36 months paying 1% to general unsecured creditors, and a monthly plan payment of \$600.00. According to the Chapter 13 Trustee's calculations the plan will take approximately 96 months to complete. The overextension is caused by a discrepancy with the claim filed by the Internal Revenue Service. Section 3.12 of Debtor's plan provides for \$914.00 in priority claims; the Internal Revenue Service filed a priority claim in the amount of \$7,109.16. The Debtor has completed 38 months of the 36-month plan; approximately \$5,750.49 remains to be paid to complete the plan.

The Trustee filed the Notice of Filed Claims on March 15, 2019, that includes allowed claims that will prevent Debtor's plan from being completed timely. Debtor has failed to object to the claim or modify her plan as required by Local Bankr. R. 3007-1(d)(3) and (5).

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

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(3), any party in interest shall have until 5:00 p.m. on Friday, October 29, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(3). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 2, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on November 2, 2021, at 1:00 p.m.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 14-days notice. Local Bankruptcy Rule 9014-1(f)(3). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to **conditionally grant the amended motion to dismiss case and continue the matter to November 2, 2021, at 1:00 p.m.**

First, as of October 12, 2021, plan payments under the plan are delinquent in the sum of \$3,289.00. The last payment having been received on October 5, 2021. Debtor's failure to perform under the plan is prejudicial to creditors since they are delayed in receiving payments. 11 U.S.C. § 1307(c)(1) and (6).

Second, U.S. Bank National Association filed a Notice of Mortgage Payment Change on April 19, 2021, stating the mortgage payment will increase to \$1,579.75 beginning July 1, 2021. Pursuant to the Notice of Mortgage Payment Change, Debtor's plan payment was increased to \$3,133.00 beginning July 25, 2021.

Third, Debtor's confirmed plan is for a term of 60 months paying 0% to general unsecured creditors, and a monthly plan payment of \$3,055.00. According to the Chapter 13 Trustee's calculations the plan will take approximately 69 months to complete. The overextension is caused by a discrepancy with the claim filed by the Internal Revenue Service. Section 3.12 of Debtor's plan provides for \$10,300.00 in priority claims; the Internal Revenue Service filed a priority claim in the amount of \$43,452.82. The Debtor has completed 18 months of her 60-month plan.

The Trustee filed the Notice of Filed Claims on October 27, 2020, that includes allowed claims that will prevent Debtor's plan from being completed timely. Debtor has failed to object to the claim or modify her plan as required by Local Bankr. R. 3007-1(d)(3) and (5).

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

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(3), any party in interest shall have until 5:00 p.m. on Friday, October 29, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(3). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 2, 2021, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on November 2, 2021, at 1:00 p.m.

The court will issue an order.