

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**November 16, 2015 at 2:00 p.m.**

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1. 11-38005-A-13 LARRY/PAMELA PULLMANN MOTION TO  
JPJ-1 DISMISS CASE  
10-5-15 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied.

The trustee's Notice of Filed Claims was filed and served on August 17, 2012. That notice advised the debtor that the IRS and the FTB had filed priority claims that were significantly higher than scheduled by the debtor and therefore could not be paid in full as required by the confirmed plan. The failure to provide payment in full of these claim violates 11 U.S.C. § 1322(a)(2).

The debtor failed to reconcile the plan with these claims, either by filing and serving a motion to modify the plan to provide for the claims, or by objecting to the claims. This is required by the plan at section 2.13 of the plan ("2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable . . . The failure to provide the foregoing treatment for a priority claim is a breach of this plan.") and Local Bankruptcy Rule 3007-1, 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 In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004). The time period to reconcile the claims to the plan has expired and the debtor has failed to either object to the claims or to provide for their payment in full. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

However, the same day the trustee filed his dismissal motion, the debtor filed a proposed modified plan to pay the priority claims in full within the maximum 5-year plan duration. Therefore, the case will remain pending on condition that the plan is modified at the scheduled hearing on November 23.

**November 16, 2015 at 2:00 p.m.**

2. 13-25306-A-13 JUAN/NOEMY MENDEZ MOTION TO  
JPJ-2 DISMISS CASE  
10-21-15 [43]

**Final Ruling:** The trustee has voluntarily dismissed the motion. The case shall remain pending.

3. 11-37820-A-13 ALFREDO MORALES MOTION TO  
JPJ-1 DISMISS CASE  
10-5-15 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The trustee's Notice of Filed Claims was filed and served on August 17, 2012 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 339 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) 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).

Also, the debtor has failed to pay to the trustee approximately \$2,255.59 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This too is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

4. 15-25624-A-13 TAMMY HOLMAN MOTION TO  
JPJ-2 DISMISS CASE  
10-22-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to pay to the trustee approximately \$3,482.08 as required

by the proposed 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).

5.	14-27963-A-13	JAMES/KATHRYN BAGGARLY	MOTION TO
	JPJ-3		DISMISS CASE
			11-2-15 [83]

**Final Ruling:** The trustee has voluntarily dismissed the motion. The case shall remain pending.