

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**November 28, 2017 at 1:00 p.m.**

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1.     [17-24505](#)-B-13     SUSAN HARRIS                             MOTION TO DISMISS CASE  
          [JPJ](#)-2             Thomas L. Amberg                         10-31-17 [[41](#)]

**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)(B) 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 moves to dismiss this case due to Debtor's failure 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 September 12, 2017.

Debtor has filed a response stating that she will file an amended plan. According to the Debtor, the delay in filing an amended plan was due to the fact that she has been waiting for a realistic offer on the purchase of her home. An amended plan was filed on November 17, 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.

**November 28, 2017 at 1:00 p.m.**

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2. [17-25509](#)-B-13 DONNETTE DESANTIS ORDER TO SHOW CAUSE - FAILURE  
Thru #3 Richard L. Jare TO PAY FEES  
10-25-17 [[28](#)]

DEBTOR DISMISSED: 11/01/2017

**Final Ruling:** No appearance at the November 28, 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.

3. [17-25509](#)-B-13 DONNETTE DESANTIS MOTION TO DISMISS CASE  
[JPJ](#)-2 Richard L. Jare 10-11-17 [[24](#)]

DEBTOR DISMISSED: 11/01/2017

**Final Ruling:** No appearance at the November 28, 2017, hearing is required.

The case having previously been dismissed, the motion is denied 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 has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Second, the Debtor did not appear at the first meeting of creditors set for November 2, 2017, as required pursuant to 11 U.S.C. § 343. Cause exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1).

Third, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$300.00, which represents approximately 1 plan payment. By the time this motion is heard, an additional plan payment in the amount of \$300.00 will also be due. The Debtor has failed to make any plan payments since this petition was filed on September 25, 2017. Causes exists to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) and (c)(4).

Fourth, 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).

Fifth, 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).

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

The court will enter an appropriate minute order.

5. [16-20557](#)-B-13 DELMAR/KAREN REYNOLDS MOTION TO DISMISS CASE  
[JPJ](#)-5 Clark D. Nicholas 11-3-17 [[74](#)]

**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 dismiss the case.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of \$800.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$400.00 will also be due. The Trustee has filed three Notices of Default and Applications to Dismiss Case since September 28, 2016. Cause exists to dismiss this case 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.

6. [17-25261](#)-B-13 VIK/CHRISTA HYLEN MOTION TO DISMISS CASE  
[JPJ](#)-1 Peter L. Cianchetta 10-31-17 [[21](#)]

**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)(B) 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 moves to dismiss this case due to Debtors' delinquency in plan payments in the amount of \$1,455.00, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment of \$727.50 will also be due. The Debtors have not made any plan payments since the petition was filed on August 9, 2017. Cause would exist to dismiss this case pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(4).

Debtors have filed a response stating that they will file an amended plan and motion to confirm it prior to the date of this hearing. No amended plan has been filed as of November 27, 2017.

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

The court will enter an appropriate minute order.

7. [15-27771](#)-B-13 MIKEL MYERS  
[JPJ](#)-5 Gary Ray Fraley

MOTION TO DISMISS CASE  
11-3-17 [[31](#)]

**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.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$972.48, which represents approximately 2 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$494.27 will also be due. The Trustee has filed four Notices of Default and Applications to Dismiss Case since September 28, 2016. Cause exists to dismiss this case 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.

8. [17-25575](#)-B-13 ORACIO QUEZADA  
Mark A. Wolff

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
10-27-17 [[44](#)]

**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 Debtor to pay the filing fee in installments.

The court granted the Debtor permission to pay the filing fee in installments. The Debtor failed to pay the \$77.00 installment when due on October 23, 2017. While the delinquent installment was paid on November 7, 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.

**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)(B) 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 this case but to sanction the attorney of record, Albert L. Boasberg, \$250.00 for the conduct, including multiple local rule violations, discussed below.

### Background

On September 19, 2017, the court denied confirmation of the initial Chapter 13 plan that Debtor Renee Martin ("Debtor") filed on August 4, 2017. See dkt. 42, 58-60. Debtor's counsel requested - and was granted - two weeks from that date to file an amended plan. See dkt. 58. Two weeks from September 19, 2017, was October 3, 2017. An amended plan was not filed by October 3, 2017.

Twenty-eight days later, on October 31, 2017, the Chapter 13 Trustee ("Trustee") filed a motion to dismiss this case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay prejudicial to creditors. See dkt. 62-65. On November 14, 2017, the Debtor (and as noted below literally the Debtor) mailed to the court an opposition to the Trustee's motion to dismiss. See dkt. 70, Ex. 1. That opposition was received and filed on November 16, 2017. See Dkt. 67-68. An amended plan was also filed on November 16, 2017, some 58 days after confirmation of the Debtor's initial plan was denied and 44 days after the Debtor's counsel represented an amended plan would be filed. See dkt. 69. A motion to confirm was not filed with the amended plan so there currently is no confirmation hearing set.

Declarations filed on November 16, 2017, and November 18, 2017, shed some light on the delay in this case.<sup>1</sup> In the November 16 declaration, the Debtor states that she made the August, September, and October 2017 payments to the Trustee, the November 2017 payment is forthcoming, she recently lost her home to foreclosure, she was thereafter evicted, and as a result she suffered significant medical consequences resulting in hospitalization. See dkt. 68.

But it is the Debtor's November 18 declaration that is of significant interest to the court. Quoted in its entirety, that declaration states as follows:

I, RENEE' L. MARTIN, debtor herein declare under penalty of perjury under the laws of California that the following is [sic] true and correct:

1. That on November 14, 2017, I attempted to upload the documents into the bankruptcy system, opposition to dismiss the case, supported by my declaration.

2. I experienced technical difficulties and was unable to upload those documents. However, because of this problem, I immediately went to the nearby U.S. postal service to mail those documents on that date for them to be considered timely. See 'Certificate of Service' as proof, as EXHIBIT 1.

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<sup>1</sup>The Debtor's November 18 declaration was originally uploaded to the court's proposed order inbox. After it was discovered, the court ordered it filed on the docket.

3. I request for an order and those opposition documents mailed on November 14, 2017 to this Court to be considered timely.

Dkt. 70 (Emphasis in original).

### Discussion

As an initial matter, the Debtor's opposition to the Trustee's motion to dismiss is untimely. That opposition was due November 14, 2017, which is 14 days prior to the hearing date. See LBR 9014-1(f)(1)(B). The opposition that the Debtor mailed to the court on November 14, 2017, was received on November 16, 2017, which is when it was filed. See LBR 5005-1(g) (document submitted on paper deemed filed when clerk takes physical possession of document). In other words, the Debtor's opposition to the Trustee's motion to dismiss is two days late. Nevertheless, the court will accept the Debtor's late-filed opposition because it will not penalize the Debtor for the inept representation of her attorney, who put the Debtor in the position of having to file her own late opposition.

Considering the Debtor's late opposition first. The court is persuaded that the Debtor has sufficiently explained the delay in the filing of an amended plan and her explanation is reasonable. In other words, there is delay but given the circumstances explained in the Debtor's November 16 declaration, that delay is not unreasonable. Therefore, the court will conditionally deny the Trustee's motion to dismiss this case. The Debtor shall have 60 days from November 28, 2017, to confirm a plan. If a plan is not timely confirmed, this case may be dismissed on the Trustee's ex parte application.

Now to counsel's inept representation of the Debtor, which includes several local rule violations. Those violations warrant sanction as authorized by LBR 1001-1(g), which states as follows:

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, dismissal of any action, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

First, Debtor's counsel failed to timely oppose the Trustee's motion to dismiss. As is evident from the Debtor's November 18 declaration, an opposition to that motion was filed only because the **Debtor** filed one. And that opposition was late because counsel failed to timely file it. Therefore, by not timely opposing the Trustee's motion to dismiss and by causing the Debtor to file a late opposition, Debtor's counsel violated LBR 9014-1(f)(1)(B).<sup>2</sup>

Second, Debtor's counsel should know that, as a represented party, the Debtor may not file documents on her own behalf and, as the Debtor's attorney of record, he is obligated to file documents on behalf of his client. See Fed. R. Bank. P. 9010(a). Yet, as noted above, the Debtor states in her November 18 declaration that she attempted to upload an opposition to the Trustee's motion to dismiss and a supporting declaration into the court's system and, when she was unable to do so because of technical difficulties, she mailed those documents to the court from a local post

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<sup>2</sup>This is not the first time a late opposition has been filed. This is the same untimeliness that occurred with respect to Wells Fargo Bank's motion for relief from the automatic stay, dkt. 23, which the court heard as a final ruling and granted since no opposition was timely filed at least 14 days prior to the date of the hearing.

office.<sup>3</sup> By not timely filing an opposition to the Trustee's motion to dismiss on the Debtor's behalf and by causing the Debtor to file a late opposition on her own, Debtor's counsel violated LBR 2017-1(a) (1) which states that "[a]n attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance **for all purposes** in the case" and LBR 2017-1(a) (2) which states that, except in circumstances not applicable here, "[a]n attorney appearing in a bankruptcy case . . . may not . . . **decline to act on behalf of the client**[" (Emphasis in both added).

Finally, the court is unable to ascertain what, if anything, Debtor's counsel has charged or intends to charge the Debtor for services provided in or in connection with this Chapter 13 case. Therefore, pursuant to 11 U.S.C. § 329(a), the court orders Debtor's counsel to file a written statement disclosing all compensation received or to be received for services Debtor's counsel provided or has agreed to provide in or in connection with this Chapter 13 case and any written fee or compensation agreements between the Debtor and counsel.<sup>4</sup>

### **Conclusion**

For all the foregoing reasons, it is ordered that the Trustee's motion to dismiss is conditionally denied. The Debtor shall have 60 days to confirm a plan. If a plan is not timely confirmed this case may be dismissed on the Trustee's ex parte application.

It is further ordered that Debtor's counsel is sanctioned \$250.00, which shall be paid to the clerk of the court by December 5, 2017. Debtor's counsel shall also file a certification of payment within three (3) calendar days after payment is made.

It is further ordered that Debtor's counsel shall file a § 329(a) statement by December 5, 2017.

The court will issue an appropriate order substantially in the form above.

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<sup>3</sup>That raises an interesting question as to how the Debtor was even able to access the court's e-filing system to attempt to upload a document. See LBR 5005.5-1(a) & (d).

<sup>4</sup>11 U.S.C. § 329(a) states as follows:  
(a) Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.

10. [17-26480](#)-B-13 TORREAN TYUS  
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-3-17 [[29](#)]

**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 October 30, 2017. The court's docket reflects that the default has not been cured.

The court will enter an appropriate minute order.

11. [17-26389](#)-B-13 DANIEL MAPLES  
Steele Lanphier

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-1-17 [[24](#)]

**Final Ruling:** No appearance at the November 28, 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.