

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 22, 2014 at 2:00 p.m.

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1. 11-46901-A-13 EVELYN MARTIN MOTION TO
JPJ-2 DISMISS CASE
11-4-14 [40]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied. The motion is based on the debtor's failure to lodge a confirmation order. That order has been lodged, signed and entered.

2. 13-32201-A-13 BRYAN/CASSANDRA NOLL MOTION TO
JPJ-3 DISMISS CASE
11-24-14 [48]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The debtor has failed to provide to the trustee a copy of the debtor's 2013 federal income tax return as demanded by the trustee. Local Bankruptcy Rule 3015-1(b)(5), section 6.02 of the confirmed plan, and 11 U.S.C. § 521(a)(3) require the debtor to cooperate with the trustee and to provide him with copies of relevant financial documents, like tax returns. The failure to provide the return to the debtor is prejudicial to the trustee who has an obligation to monitor the debtor's performance in this case. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (6).

3. 14-29509-A-13 JAMES KILEY MOTION TO
JPJ-1 DISMISS CASE
11-10-14 [18]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

First, The debtor failed to appear at the meeting of creditors on November 6 as required by 11 U.S.C. § 343. This breach of duty is cause to dismiss the petition. See 11 U.S.C. § 1307(c)(6).

Second, because the debtor did not file a proposed plan until October 10, the trustee was unable to serve the plan with the notice of commencement of case. The trustee directed the Bankruptcy Noticing Center to serve that notice. Such

December 22, 2014 at 2:00 p.m.

service occurred on October 9. Because the trustee had not received the plan in time to include it with the service of the notice on all creditors, it was incumbent on the debtor to serve the plan together with a motion to confirm the plan. See Local Bankruptcy Rule 3015-1(c)(3).

Three time constraints dictate the deadline to confirm a plan. First, the debtor must give 28 days of notice of the deadline for objections to confirmation as well as of the confirmation hearing. See Fed. R. Bankr. P. 2002(b). Second, this court requires that parties in interest file written objections to confirmation 14 days prior to the hearing on a motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). Thus, the first two time constraints combine to require 42 days' notice of a hearing to confirm a plan. Third, 11 U.S.C. § 1324 requires that a confirmation hearing be held no earlier than 20 days after the meeting of creditors and no later than 45 days thereafter. In this case, the meeting was set for, and concluded on November 6. So, counting time pursuant to Fed. R. Bankr. P. 9006(a), the 45-day deadline set by section 1324 expires on December 21.

A review of the docket reveals that no motion to confirm the plan has been filed, served, and set for hearing. At this point in the case, it will be impossible for the debtor to file, serve, and set for hearing a motion to confirm the plan while giving the notice required by Rule 2002(b) and Local Rule 9014-1(f)(1). There can be no timely confirmation hearing in this case. As a result, there is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

4. 09-39276-A-13 RICHARD GUTIERREZ MOTION TO
JPJ-1 DISMISS CASE
12-4-14 [110]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor has failed to pay to the trustee approximately \$820 as required by the debtor's confirmed plan. On condition that this default is cured and sufficient other funds are paid to the trustee to pay off the remaining obligations due under the plan by January 25, 2015, the case will remain pending. If these sums are not paid, the petition will be dismissed on the trustee's ex parte request because the failure maintain plan payments and to conclude the plan within 60 months has caused delay to the prejudice of the creditors. See 11 U.S.C. § 1307(c)(1) & (c)(4).